**Calendar No. 501**

113TH CONGRESS
*2d Session*

SENATE

REPORT
113–224

# TO AMEND THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT OF 2005, AND FOR OTHER PURPOSES

JULY 30, 2014.—Ordered to be printed

Mr. TESTER, from the Committee on Indian Affairs, submitted the following

## R E P O R T

[To accompany S. 2132]

The Committee on Indian Affairs, to which was referred the bill (S. 2132) to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

### NEED FOR LEGISLATION

In recent years the Committee has received concerns and complaints from Indian tribes that the many Federal laws governing the development of tribal energy resources are complex and often lead to significant cost, delay and uncertainty for all parties of tribal energy transactions. These costs, delays and uncertainties tend to discourage development of tribal trust energy resources and drive development investments to private or non-tribal lands that are not subject to these same Federal laws. Generally, this bill is intended to remove some of the disincentives to developing tribal trust energy resources and assist Indian tribes interested in pursuing the development of these resources consistent with the policy of Indian self-determination.

## PURPOSE

The purpose of S. 2132 is to amend certain provisions of the Energy Policy Act of 2005[1] to further enhance the ability of Indian tribes to exercise self-determination over the development of energy resources located on tribal lands; to establish tribal biomass demonstration projects; to improve, facilitate, and make more effective the implementation of the program in Indian Country under section 413(d) of the Energy Conservation and Production Act;[2] and to otherwise facilitate Indian tribal governments in their goals to develop both renewable and non-renewable energy resources for the benefit of current and future generations of Indian people.

## BACKGROUND

Due to increased population and growing economies, global energy demand is expected to increase by one-third from 2011 to 2035, with increases in oil by 13%, coal by 17%, natural gas by 48%, nuclear by 66% and renewables by 77%.[3] Corresponding with this increase in demand is an increase in energy supply—due to new drilling technologies in the United States, there has been spectacular growth in "light tight oil" production from low permeable shale formations in recent years.[4]

The primary location for light tight oil production in the United States is the Bakken Formation in North Dakota, which is the largest known continuous oil accumulation in the United States.[5] In the heart of the Bakken formation lies the Fort Berthold Indian Reservation, home to the Mandan, Hidatsa, and Arikara tribes. Although the Fort Berthold Indian Reservation contains an abundance of resources lying within the Bakken formation, tribal access to the resources is hindered by the complex Federal laws and regulations that apply to Indian reservations. The Federal process for obtaining a permit to extract Indian energy resources can take up to two years, whereas the permitting process for development of non-Indian energy resources on adjacent private or non-tribal land typically takes less than two weeks.[6]

Delays in leasing and permitting for new energy production sites are especially costly to Indian tribes in light of the renaissance in light tight oil production. As opposed to conventional oil production, the production of light tight oil rapidly declines at each well, requiring continuous investment and drilling of new wells to maintain production.[7] It takes many wells and continuous drilling to achieve sustainable production. Maintaining the energy production at the Bakken formation will require drilling around 2,500 wells per year, compared to 60 new wells typically required in a conventional oil field.[8] Additionally, new advancements in drilling rigs are

---

[1] Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005) (codified in scattered sections of Titles 25 U.S.C., 26 U.S.C., and 42 U.S.C.).
[2] Pub. L. No. 94–385, § 413(d) (codified at 42 U.S.C. § 6863(d)).
[3] International Energy Agency, *World Energy Outlook 2013*, November 2013 at 55.
[4] International Energy Agency, *World Energy Outlook 2013*, November 2013 at 424.
[5] International Energy Agency, *World Energy Outlook 2013*, November 2013 at 475.
[6] *Tribal Development of Energy Resources and the Creation of Energy Jobs on Indian Lands: Hearing Before the Subcomm. on Indian and Alaska Native Affairs of the H. Natural Resources Comm.*, 112th Cong. 18–19 (2011) (statement of Tex G. Hall, Chairman, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation).
[7] International Energy Agency, *World Energy Outlook 2013*, November 2013 at 467.
[8] International Energy Agency, *World Energy Outlook 2013*, November 2013 at 475–476.

making it possible for wells to be drilled and resources to be tapped at a faster rate, increasing the need for improvements to the tribal energy leasing process for Indian tribes to be able to compete in the energy market.[9]

This bill, S. 2132, would help level the playing field for Indian tribes that, if they so choose, can participate in the new and expanding energy market in the United States. If S. 2132 were enacted, Indian tribes would be able to lease and develop their trust energy resources in a timely, responsible, and profitable way.

*Overview of Indian Energy Development—Leases and agreements under the IMLA and IMDA*

Historically, most energy development on Indian lands has been carried out under the authority of the Indian Mineral Leasing Act of 1938[10] (IMLA) and its implementing regulations[11] or the Indian Mineral Development Act of 1982[12] (IMDA) and its implementing regulations.[13] Prior to the enactment of the IMLA, minerals on Indian lands were developed under a number of Federal statutes dating back to 1891.[14]

The IMLA authorizes only mineral leases, whereas the IMDA authorizes a "joint venture, operating, production sharing, service, managerial, lease or other agreement."[15] The IMDA was specifically intended to provide Indian tribes both with a greater role and with more flexibility in the mineral development process than is possible under the IMLA, by allowing the Indian tribes themselves to negotiate and structure mineral agreements. The IMDA was a significant policy step in furtherance of the broader Federal policy of Indian self-determination.[16]

Despite the greater flexibility and increased tribal involvement in negotiations that the IMDA provides to Indian tribes, the Secretary of the Interior (Secretary) retains considerable control over the process of finalizing any IMDA agreement. Most notably, the IMDA requires the Secretary to review a proposed IMDA agreement between the Indian tribe and a third party and determine whether it is in the best interest of the Indian tribe in light of several economic and non-economic factors.[17] If the Secretary is not satisfied that the proposed agreement meets the statutory test, the Secretary may disapprove it.[18] The IMDA's implementing regulations also authorize the Secretary to cancel agreements for a range of violations by an operator[19] and to impose a penalty of up to $1000 for each day that a violation or non-compliance "continues

---

[9] In North Dakota, 2,086 wells were spudded in 2012, using 200 drillings, and averaging ten wells per rig over the course of the year. This represents a significant improvement on the 2011 average of 8 wells per rig (1,528 wells with 82 rigs). International Energy Agency, *World Energy Outlook 2013*, November 2013 at 453.

[10] Act of May 11, 1938, 52 Stat. 347 (codified at 25 U.S.C. §§ 396a–396g).

[11] 25 C.F.R. pt. 211.

[12] Indian Mineral Development Act of 1982, Pub. L. No. 97–382, 96 Stat. 1938 (codified at 25 U.S.C. §§ 2101–2108).

[13] 25 C.F.R. pt. 225.

[14] *See, e.g.*, Act of February 28, 1891, 26 Stat. 795 (codified at 25 U.S.C. § 397); Act of June 30, 1919, 41 Stat. 31 (codified at 25 U.S.C. § 399); Act of September 20, 1922, ch. 347, 42 Stat. 857 (codified at 25 U.S.C. § 400).

[15] 25 U.S.C. § 2102(a).

[16] *See* S. Rep. No. 97–472, at 2 (1982). *See generally* Cohen's Handbook of Federal Indian Law § 17.03[2][a]–[b], at 1123–30 (Nell Jessup Newton et al. eds., LexisNexis 2012) (1941).

[17] 25 U.S.C. § 2103(b).

[18] *Id.* § 2103(a)–(b).

[19] 25 C.F.R. § 225.36.

beyond the time limits prescribed for corrective action."[20] Neither the statute nor the regulations require the Secretary to consult with the Indian tribe or obtain its consent before taking these actions against an operator. In fact, it would appear that the Secretary has the authority to cancel the agreement and fine an operator even if the Indian tribe were to oppose these measures.

Curiously, under the IMDA, even though the Secretary decides whether to approve, disapprove, or cancel an agreement, and to determine whether an operator has violated an agreement and whether to impose stiff penalties for doing so, the IMDA nevertheless expressly exempts the United States from liability "for losses sustained by a tribe or individual Indian under such agreement" as long as the Secretary approved the agreement in accordance with the Act and other applicable law.[21] Therefore, the IMDA provides the Secretary with the ultimate control over mineral development decisions but at the same time appears to provide that the United States cannot be held accountable financially for those decisions as long as the Secretary followed the law.

*Costly delays due to burdensome Federal processes for energy development on tribal lands*

Approval of leases or agreements involving Indian lands by the Secretary is an act of a Federal official that triggers the environmental review process under the National Environmental Policy Act (NEPA).[22] The time needed for the Department of the Interior to comply with Federal statutes and regulations that apply specifically to Indian lands, such as the IMLA and the IMDA and the implementing regulations, combined with the time needed to comply with NEPA often leads to extraordinary delays in the approval of mineral leases and agreements.

As Chairman Tex Hall of the Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation testified at a hearing in 2011 before the House Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs:

> In order to comply with the many Federal laws and regulations that apply to Indian mineral activities, the Interior Department has developed a 49-step process for obtaining Federal approvals involving oil and gas exploration. This 49-step process can take as long as two (2) years to complete. In contrast, the process for approving oil and gas exploration activities on non-Indian lands in North Dakota takes just 4 steps. Oil and gas leases [on these non-Indian lands] don't need governmental approval and, according to the North Dakota Industrial Commission, it only takes about a week and a half to process an application for a permit to drill. I believe we must find a way to streamline the process for federal review and approval of in-

[20] 25 C.F.R. § 225.37(a).

[21] 25 U.S.C. § 2103(e). Note, however, the second proviso at the end of this subsection: "[N]othing in this Act shall absolve the United States from any responsibility to Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreement between the United States and any Indian tribe."

[22] National Environmental Policy Act of 1969, Pub. L. No. 91–190, 83 Stat. 852 (1970) (codified at 42 U.S.C. § 4321 et seq.). *See* Davis v. Morton, 469 F.2d 593, 597 (10th Cir. 1972) (approval of long term surface lease of Tesuque Pueblo's land requires review under NEPA); Manygoats v. Kleppe, 558 F.2d 556, 561 (10th Cir. 1977) (approval of an IMLA lease of tribal lands for uranium mining purposes requires review under NEPA).

dividual Indian and tribal mineral leases and agreements and make it less complicated and more efficient.[23]

At the Committee's legislative hearing for S. 2132 held on April 30, 2014, Chairman Howell of the Ute Indian tribe of the Uintah and Ouray Reservation submitted written testimony about the hindrances of federal oversight and regulations. In his testimony, Chairman Howell stated:

> The Tribe takes an active role in the development of its resources, however, despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. For example, we need 10 times as many permits to be approved. Currently, about 48 Applications for Permits to Drill (APD) are approved each year for oil and gas operations on the Reservation. We estimate that 450 APDs will be needed each year as we expand operations. As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. In order for the Tribe to continue to grow and expand our economy the federal permitting process needs to be streamlined and improved.[24]

At the same legislative hearing, Chairman Olguin of the Southern Ute Tribe testified about a letter written to Regional Director of the Bureau of Indian Affairs in 2009 explaining the impacts of the bureaucratic delays. He stated in his written testiomony (quoting the letter) the following:

> [A]pproximately 24 Applications for Permit to Drill (APDs) await BIA concurrence. Additionally, approximately 81 pipeline [Rights-of-way] await issuance by the BIA. Of the 81 pending ROWs, 11 were approved in Tribal Council resolutions adopted in 2006, 44 were approved in Tribal Council resolutions adopted in 2007, 22 were approved in Tribal Council resolutions adopted in 2008, and 4 were approved in Tribal Council resolutions adopted in 2009. . . . We estimate that lost revenue attributable to severance taxes and royalties alone exceeds $94,813,739. Significantly, during the period of delay, prices for natural gas rose to an historic high, but have now declined to approximately one-third of that market value. Thus, much of this money will never be recovered by the Tribe.[25]

*Title V of the Energy Policy Act of 2005*

Title V of the Energy Policy Act of 2005, the Indian Tribal Energy Development and Self-Determination Act[26] (ITEDSDA), cre-

---

[23] *Tribal Development of Energy Resources and the Creation of Energy Jobs on Indian Lands: Hearing Before the Subcomm. on Indian and Alaska Native Affairs of the H. Natural Resources Comm.*, 112th Cong. 18–19 (2011) (statement of Tex G. Hall, Chairman, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation).

[24] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs*, 113th Cong. (2014) (testimony submitted from Gordon Howell, Chairman, Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation).

[25] *Id.* (testimony by James Olguin, Acting Chairman, Southern Ute Indian tribe).

[26] Indian Tribal Energy Development and Self-Determination Act, Title V of the Energy Policy Act of 2005, Pub. L. No. 109–58, §§ 501–506, 119 Stat. 763 (codified at 25 U.S.C. §§ 3501–3506).

ated Indian energy programs within the Department of the Interior and the Department of Energy;[27] established energy-related grant and technical assistance programs for Indian tribes and Alaska Native corporations;[28] encouraged the Bonneville and Western Power Administrations to facilitate the development of tribal energy resources;[29] and authorized a feasibility study for developing tribal wind and hydropower demonstration projects on the Missouri River.[30]

The ITEDSDA also created a new, alternative process for Indian tribes to negotiate and approve energy-related agreements and rights-of-way on tribal trust and restricted lands.[31] Commonly referred to as the "TERA process," section 3504 of the ITEDSDA authorizes "tribal energy resource agreements" (TERA or TERAs) between an Indian tribe and the Secretary of the Interior.[32] When operating under a TERA, an Indian tribe can enter into leases, business agreements, and rights-of-way without any further approval of the Secretary.

*a. Legislative history of the TERA*

The ITEDSDA was enacted in the 109th Congress but was largely developed during the 108th, having originated from two separate Indian energy bills. One of these bills, S. 522, was introduced by Senator Ben Nighthorse Campbell (then Chairman of the Committee), and the other, S. 424, by Senator Jeff Bingaman (then ranking member of the Committee on Energy and Natural Resources). The Committee held a hearing on the two bills on March 19, 2003.[33]

While there were a number of significant differences between the two bills, both included provisions that would authorize energy-related transactions between Indian tribes and third parties without approval by the Secretary of the Interior—which would otherwise be required under the IMLA, IMDA, or, in cases of energy-related surface uses (for example, wind or solar energy projects), 25 U.S.C. § 415—if the transactions were carried out in accordance with tribal regulations that previously had been approved by the Secretary.[34] Both bills also would have authorized Indian tribes to grant rights-of-way to third parties to serve energy-related facilities located on tribal lands without Secretarial approval if done pursuant to tribal regulations approved by the Secretary.

Both S. 424 and S. 522 included liability waiver clauses that would protect the United States from claims arising from losses

---

[27] 25 U.S.C. § 3502(a)–(c).
[28] 25 U.S.C. § 3503.
[29] 25 U.S.C. § 3505.
[30] 25 U.S.C. § 3506.
[31] 25 U.S.C. § 3504.
[32] 25 U.S.C. § 3504(e).
[33] *Tribal Energy Self-Sufficiency Act and the Native American Energy and Self-Determination Act: Hearing on S. 424 and S. 522 Before the S. Comm. on Indian Affairs*, 108th Cong. (2003).
[34] Section 103(b) of S. 424 would allow 30-year leases of tribal land for siting "electrical generation, transmission, or distribution" facilities (such as coal-fired power plants) or facilities that "refine or otherwise process renewable or non-renewable resources" (such as oil refineries) developed on tribal land. S. 522 would allow 30-year leases of tribal land for similar purposes as those authorized in S. 424 but also for "exploration for, extraction of, processing of, or other development of energy resources" (i.e., oil, gas, or coal development and production). The model for this feature of S. 424 and S. 522—authorizing leases of tribal land without Secretarial approval if done pursuant to tribal regulations that had been approved by the Secretary—was the Navajo Nation Trust Land Leasing Act of 2000, which was enacted as part of the Omnibus Indian Advancement Act. *See* Title XII of Pub. L. No. 106–568, 114 Stat. 2933 (2000).

sustained as a result of leases entered into pursuant to the authority under the bills. Although worded somewhat differently, the waivers in the two bills were fairly broad in scope and similar in effect.[35]

Senator Bingaman testified at the hearing on S. 424 and S. 522 and observed that the provision in his bill that would have allowed siting facilities on tribal land without Secretarial approval was "consistent with the sovereign authority of the tribes" but noted that concerns had been raised about the liability provision in his bill. He stated that "We are glad to work with you, Mr. Chairman, to be sure those concerns are addressed. We think there is a way to do that."[36] At the close of the hearing, Chairman Campbell stated that there was "some good in each of these bills and maybe some not so good" but that he intended to use "the best of both."[37]

The Committee staff eventually produced a revised version of S. 522 that combined many provisions from that bill with provisions in S. 424, including the provisions that allowed Indian tribes to enter into energy-related leases, agreements, and rights-of-way without the Secretary's approval. These provisions were modified in several respects—in particular by authorizing a "tribal energy resource agreement" (TERA) between the Indian tribe and the Secretary in lieu of "tribal regulations" approved by the Secretary, so that leases, agreements, and rights-of-way would not require Secretarial approval if entered into pursuant to an approved TERA.[38] This revised version of the two bills was ultimately included as Title III of S. 1005, the Energy Policy Act of 2003, as reported by the Committee on Energy and Natural Resources.[39]

While none of the Senate or House bills addressing comprehensive energy policy were enacted into law in the 108th Congress, including S. 1005,[40] in the 109th Congress the Energy Policy Act of 2005 was signed into law on August 8, 2005. The Act included, with some modifications, the Indian energy title and the TERA process that was part of S. 1005 from the previous Congress.[41]

*b. Key provisions of the TERA process under current law*

The following is a summary of the key provisions of the TERA process in the ITEDSDA.[42]

1. *Tribal trust lands.* The TERA provisions of the ITEDSDA only apply to "tribal land" as defined in 25 U.S.C. § 3501(12). Tribal land means trust or restricted land of an Indian tribe (i.e., not individual Indian trust or restricted land or tribal fee land). While the term "Indian tribe" includes Alaska Native corporations for many

[35] The liability waiver clauses in S. 424 and S. 522 are similar to the liability waiver provision in the IMDA, 25 U.S.C. § 2103(e). See supra note 21 and accompanying text.

[36] *Tribal Energy Self-Sufficiency Act and the Native American Energy and Self-Determination Act: Hearing on S. 424 and S. 522 Before the S. Comm. on Indian Affairs*, 108th Cong. 75 (2003) (statement of Sen. Jeff Bingaman, United States Sen. from New Mexico).

[37] *Id*. at 88.

[38] *See* note 59, *infra*, regarding the third-party petitioning process for some of the reasons a Secretary-Tribal agreement (i.e., the TERA) was used in lieu of tribal regulations.

[39] *See* S. Rep. No. 108–43, at 29–36.

[40] *See also* S. 14; H.R. 6; H.R. 238; H.R. 1531; H.R. 1644.

[41] *See* Energy Policy Act of 2005, Pub. L. No. 109–58, Title V, 119 Stat. 594 (2005). On March 10, 2008, the Department adopted regulations implementing the TERA provisions of the Energy Policy Act of 2005. See Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act, 73 Fed. Reg. 12821 (Mar. 10, 2008) (codified at 25 C.F.R. pt. 224).

[42] The TERA process of the ITEDSDA is set forth in 25 U.S.C. § 3504 but uses some terms defined in § 3501.

purposes of the ITEDSDA, "Indian tribe" does not include those corporations for purposes of the TERA provisions of section 3504.

2. *Tribal discretion.* The TERA process does not automatically apply to the tribal land of an Indian tribe. Whether to pursue the TERA process is a decision that the Indian tribe makes in its own discretion.

3. *Not exclusive of other mineral or energy development authority.* Nothing in the ITEDSDA states that an Indian tribe with a TERA may not, at the same time, choose to pursue energy development under the IMLA, IMDA, or any other authority under Federal law.[43]

4. *Kinds of agreements authorized.* Once a TERA has been approved by the Secretary, the Indian tribe may, without further approval of the Secretary, enter into energy leases, business agreements, and, for certain energy-related purposes, rights-of-way.[44]

5. *Scope of TERA.* A TERA may, at the tribe's option, address "all or a part" of its energy resources, whether renewable or nonrenewable.[45] Conceivably, an Indian tribe would be free to include language in the TERA that would limit its application to certain designated geographic areas within its tribal lands.

6. *Approval of the TERA by the Secretary.* The tribal authority to approve leases, business agreements, and rights-of-way without Secretarial approval requires that the Indian tribe have a TERA in place that has been approved by the Secretary.[46]

7. *Process for obtaining an approved TERA.* The following are the key steps in the process for obtaining an approved TERA under current law.[47]

(i) The tribe must submit a proposed TERA to the Secretary.[48]

(ii) The Secretary has 270 days after receiving a TERA within which to approve or disapprove the proposed TERA.[49]

(iii) The Secretary must provide notice and opportunity for public comment on the proposed TERA. However, the environmental review of the proposed TERA "shall be limited to activities specified in the provisions of the TERA."[50]

(iv) The Secretary "shall approve"[51] a proposed TERA if (1) the Indian tribe has demonstrated its capacity to regulate energy development; (2) the TERA includes provisions requiring a periodic review and evaluation of the tribe's performance under the TERA and, if the Secretary finds "imminent jeopardy" to a physical trust asset, allowing the Secretary to take protective measures, including reassumption; and (3) the TERA includes the 16 mandatory clauses

---

[43] The TERA regulations do not directly address this question but do indicate that the Indian tribe is free to choose to include "all or a part" of its energy resources as well as different "types" of energy resources in a TERA. See 25 C.F.R. § 224.52(a)–(b).

[44] 25 U.S.C. § 3504(a)–(b) imposes limitations on the duration of the term (30 years for most leases and business agreements and for rights-of-way and, in the case of oil and gas leases, "10 years and as long thereafter as oil or gas is produced in paying quantities"). However, Indian tribes may renew leases, business agreements, and rights-of-way under § 3504(c).

[45] *See supra* note 43; see also 25 C.F.R. § 224.30 (defining "Energy Resources" as "including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources"). 25 U.S.C. § 3504(a) itself expressly mentions "energy mineral resources," "electric generation, transmission, or distribution" facilities, and oil and gas resources.

[46] 25 U.S.C. § 3504(d).

[47] The regulations at 25 C.F.R. § 224.50–224.68 establish the process in considerably more detail than the statute itself.

[48] 25 U.S.C. § 3504(e)(1).

[49] 25 U.S.C. § 3504(e)(2)(A).

[50] 25 U.S.C. § 3504(e)(3); 25 C.F.R. § 224.70.

[51] 25 U.S.C. § 3504(e)(2)(B).

or provisions itemized in section 3504(e)(2)(B)(iii),[52] one of which is the environmental review process required under section 3504(e)(2)(C).

(v) The Secretary must notify the Indian tribe in writing of a disapproval decision within 10 days of the decision, stating the basis for disapproval and identifying the changes or other actions that are required to address the Secretary's concerns and providing the Indian tribe with an opportunity to revise and re-submit the TERA.[53]

(vi) The Secretary "shall approve" the revised TERA if it meets the same 3 criteria set forth in paragraph (iv), above, applicable to the original version of the TERA.[54] The Secretary has only 60 days within which to approve or disapprove a revised TERA.[55]

8. *Post-approval/TERA implementation matters.* There are a number of tasks, issues and considerations addressed in section 3504 that arise after a TERA has been approved. The following are among the more significant:

(i) The Secretary must conduct a periodic review and evaluation of the Indian tribe's performance under an approved TERA. (See paragraph 7(iv)(2) above.) The review must be conducted annually unless, after the third annual review, the Indian tribe and the Secretary agree to amend the TERA to allow biannual reviews.[56]

(ii) A copy of each lease, business agreement or right-of-way executed by the Indian tribe pursuant to its TERA must be delivered to the Secretary; the lease, agreement or right-of-way is not effective until that occurs.[57] If the TERA authorizes "direct payment" leases and agreements, the Indian tribe must furnish the Secretary with sufficient information to discharge the Secretary's trust responsibility to enforce the terms of the lease or agreement and protect the rights of the tribe.[58]

(iii) ITEDSDA allows third parties with standing to petition the Secretary if they believe the Indian tribe is not complying with its own TERA. To have standing to invoke this process, the third party must be an "interested person . . . [who] has demonstrated that an interest of the person has sustained, or will sustain, an adverse environmental impact *as a result of the failure of the Indian tribe to comply*" with its TERA.[59] Accordingly, the petitioning process is not

---

[52] *See also* 25 C.F.R. § 224.63.

[53] 25 U.S.C. § 3504(e)(4); 25 C.F.R. § 224.75. Under the regulations, the Indian tribe has 45 days (or such longer time as the tribe and the Secretary may agree) after receiving a notice of disapproval to resubmit a revised TERA. 25 C.F.R. § 224.76.

[54] 25 U.S.C. § 3504(e)(2).

[55] *Id.;* 25 C.F.R. § 224.76. Under the regulations, a disapproval of a *revised* TERA is a "final agency action" and subject to judicial review. 25 C.F.R. § 224.77. Under the regulations, only the Indian tribe has standing to seek judicial review of a decision to *disapprove* a TERA or a revised TERA. 25 C.F.R. § 224.77.

[56] 25 U.S.C. § 3504(e)(2)(D)–(E).

[57] 25 U.S.C. § 3504(e)(2)(B)(iii)(XIII)–(5)(A); 25 C.F.R. § 224.83(b).

[58] 25 U.S.C. § 3504(e)(5)(B); 25 C.F.R. § 224.63(k).

[59] 25 U.S.C. § 3504(e)(7)(A)–(B); 25 C.F.R. § 224.100–224.101 (emphasis added). As discussed *supra* at note 34 and in the accompanying text, the ITEDSDA used TERAs in lieu of tribal regulations approved by the Secretary, as in the case of the Navajo Nation Trust Land Leasing Act of 2000 (25 U.S.C. § 415(e)) and the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (Pub. L. No. 112–151, 126 Stat. 1150 [hereinafter HEARTH Act], providing similar authority for all Indian tribes to enter into surface leases without the Secretary's approval if done pursuant to tribal regulations that had been approved by the Secretary. Under the TERA process, a third-party petitioner must complain that that the Indian tribe has violated an *agreement* (i.e., a TERA) entered into between the United States and the Indian tribe. *See* 25 U.S.C. § 3504(e)(7)(A)–(B); 25 C.F.R. § 224.100–224.101. The Indian canons of construction dictate that treaties and agreements between the United States and Indian tribes must be lib-

Continued

available as an avenue for persons to air generalized grievances over the Indian tribe's activities under the TERA. Further, before a petition may be filed with the Secretary, the "interested person" must first exhaust all applicable tribal remedies, if any.[60] The regulations set forth the petitioning process in detail and provide the Indian tribe with significant opportunities to deny, address, or otherwise resolve the allegations. If, in the end, the Secretary determines that the tribe is in violation of the TERA, the Secretary must take "such action as the Secretary determines to be necessary to ensure compliance" with the TERA, including suspending activities under a lease, agreement, or right-of-way or rescinding approval of all or part of the TERA.[61]

(iv) An Indian tribe with an approved TERA may rescind the TERA in its own discretion.[62]

(v) Like the IMDA, the Navajo Nation Trust Land Leasing Act, and, most recently, the HEARTH Act, the TERA provisions of the ITEDSDA include a liability waiver clause[63] that protects the United States. However, the liability waiver provision in ITEDSDA is intended to be narrower than the corresponding clauses in those other three acts. The ITEDSDA waiver protects the United States only from liability for those matters over which the Secretary has no control—namely, from losses resulting from the "negotiated terms" of leases, business agreements, and rights-of-way.[64] "Negotiated term" is defined for purposes of this clause as "any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to an approved" TERA.[65] The clause would not protect the United States from losses resulting from the Secretary's own failure to carry out obligations imposed on the Secretary under the ITEDSDA—for example, from failure to conduct a periodic review and evaluation or from a failure to protect the tribe's interests as a result of a breach of a lease or business agreement.[66]

*c. Tribal concerns with the TERA process under current law*

During the consultation process before the introduction of the bill and subsequently, tribal representatives expressed concerns about certain aspects of the TERA process under current law. These concerns were, by and large, the same concerns discussed in two law

---

erally construed in favor of the tribe; therefore, TERAs should be construed in favor of the tribe when the Secretary is entertaining a third-party petition. *See* Worcester v. Georgia, 31 U.S. 515, 552–53, 582 (1832); Choate v. Trapp, 224 U.S. 665, 675 (1912); and County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 147 (1985). Further, § 3504(e)(6) requires the Secretary to carry out the section "in good faith and in the best interests of the Indian tribes." *See also* 25 C.F.R. § 224.40.

[60] 25 U.S.C. § 3504(e)(7)(B); 25 C.F.R. § 224.100.

[61] 25 U.S.C. § 3504(e)(7)(D)(iii); 25 C.F.R. § 224.120.

[62] 25 U.S.C. § 3504(e)(8)(B); 25 C.F.R. § 224.170–224.175.

[63] 25 U.S.C. § 3504(e)(6)(D)(ii).

[64] 25 U.S.C. § 3504(e)(6)(D)(i).

[65] 25 U.S.C. § 3504(e)(6)(D)(ii).

[66] Nor would the clause protect the United States from liability for losses resulting from a lease, agreement, or right-of-way that was entered into by the Indian tribe and a third party but that was *not* authorized under the terms of the tribe's TERA. For instance, as noted above, the TERA might only authorize development of a specific kind of energy resource, such as wind energy. If the Indian tribe proceeds to enter into a solar project agreement or an oil and gas or coal lease, and provides a copy of the lease to the Secretary pursuant to 25 C.F.R. § 224.83(b), it seems unlikely the United States could argue successfully that any losses resulted from the "negotiated terms" of a lease entered into "pursuant to an approved tribal energy resource agreement."

review articles about the ITEDSDA, one by Professor Judith V. Royster[67] and the other by Benjamin J. Fosland.[68]

In her article on the ITEDSDA, Professor Royster identifies and discusses four areas of concern raised by tribal representatives regarding the TERA process.[69] In his article, Benjamin J. Fosland addresses the same basic areas of concern but in three broad categories: (1) many Indian tribes "lack the resources to make the resource agreement system feasible"; (2) the requirement of public comment in the tribe's decision-making is anathema to tribal sovereignty and self-government; and (3) the Federal government is relieved of the trust responsibility after a tribe enters into a TERA.[70] He concludes that all three criticisms of the ITEDSDA "are largely unwarranted."[71]

With regard to funding, Fosland notes that, although grant funding and other support authorized under the ITEDSDA may not be sufficient to fully fund the needs of all Indian tribes that might be interested in pursuing the TERA process[72]—

> it is unlikely that all tribes will attempt to engage in serious energy development simultaneously. And as tribes become better able to regulate their own energy development, the need for funding and technical expertise provided by the Secretary will decrease.[73]

Moreover, this same lack-of-funding criticism can be leveled equally at the IMDA. While the Secretary must review and approve all IMDA agreements, what is perhaps the most difficult part of the process—preparing for and engaging in negotiations and structuring agreements with third parties—must be carried out by the Indian tribe itself. The provision of the IMDA requiring the Secretary to provide "advice, assistance, and information during the negotiation of a Minerals Agreement" is expressly conditioned upon "the extent of [the Secretary's] available resources."[74]

It is true that the ITEDSDA requires some public involvement both in the process of TERA approval by the Secretary and in energy development activities by the Indian tribe after the TERA has been approved. However, as Professor Royster points out in regard to the Secretary's TERA approval process, provisions in the ITEDSDA and its implementing regulations limiting the scope of

---

[67] Judith V. Royster, *Practical Sovereignty, Political Sovereignty, and the Indian Tribal Energy Development and Self-Determination Act*, 12 Lewis & Clark L. Rev. 1065 (2008).

[68] Benjamin J. Fosland, *A Case of Not-So-Fatal Flaws: Re-Evaluating the Indian Tribal Energy and Self-Determination Act*, 48 Idaho L. Rev. 447 (2012).

[69] These are (1) not all tribal trust resources are covered by the TERA provisions of the ITEDSDA, including non-energy minerals like clay, sand and gravel; (2) lack of access to financial, technical, and scientific resources to carry out the TERA; (3) the prospect of public involvement in tribal decision-making (including during the Secretary's review of a proposed TERA, the tribal environmental review process required to be covered by a TERA under the ITEDSDA, and the process of "interested party" petitions); and (4) implications for the Federal trust responsibility. *See* Royster, *supra note* 67 at 1087–1101. Some of these concerns were echoed by tribal representatives to Committee staff prior to and after the introduction of the bill. The comment most often heard was that the ITEDSDA does not include financial assistance for Indian tribes that enter into TERA. The trust responsibility concern was mentioned but less prominently, perhaps reflecting a growing awareness among Indian tribes that the liability waiver in the ITEDSDA is narrower than that in the IMDA and that the ITEDSDA requires considerable involvement of the Secretary in protecting the tribal interest notwithstanding the approval of a TERA.

[70] Fosland, *supra note* 68 at 449.

[71] *Id.*

[72] *Id.* at 454–55.

[73] *Id.* at 455.

[74] 25 U.S.C. § 2106.

the Secretary's review of a proposed TERA, requiring the Secretary to "act in accordance with the trust responsibility," to act "in good faith and in the best interests of the Indian tribes," and to "liberally construe" the ITEDSDA and its implementing regulations for the benefit of the tribes to implement the Federal policy of self-determination—

> obligate the Secretary, in considering the approval of a TERA, to place tribal self-determination at the core of the decision. Although the Secretary will consider and respond to relevant public comments on a proposed TERA, the Secretary should do so in light of the policies and regulations promoting tribal self-determination and energy development.[75]

As for the concern about public involvement in the tribe's environmental review process, Professor Royster observes that this process, which she notes is intended to "mirror" provisions in NEPA, "will be costly, and . . . have the potential to delay implementation of tribal resource decisions," but that "the environmental review provisions are not necessarily incompatible with practical sovereignty."[76] Benjamin J. Fosland reaches a similar conclusion in his article on the TERA process.[77] Moreover, the broad tribal support[78] for the recently adopted HEARTH Act[79] suggests that, whatever the concerns over a statutory requirement of public input in a tribe's energy development process may have been when the ITEDSDA was adopted in the 109th Congress, those concerns appear to have diminished somewhat in the intervening years in light of the fact that the HEARTH Act has similar requirements for public involvement.[80] The same applies to concerns over the "interested party" challenges authorized in the ITEDSDA—the HEARTH Act, similar to the TERA process, authorizes interested parties to petition the Secretary and complain that an Indian tribe is violating its own leasing regulations.[81]

In regard to concerns over the ITEDSDA and the trust responsibility, Professor Royster points out that "one significant difference between the IMDA and the ITEDSDA . . . [is that] under the IMDA, the Secretary approves or disapproves each specific agreement for mineral development . . . [and] is bound not only by the vague 'best interest of the Indian tribe' standard, but is instructed to consider such factors as potential economic return, financial ef-

---

[75] Royster, *supra* note 67 at 1089.
[76] *Id.* at 1090 (citations omitted).
[77] Fosland, *supra* note 68 at 459.
[78] *See S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011: Hearing Before S. Comm. on Indian Affairs*, 112th Cong. 64 (2011) (statement of Cheryl A. Causley, Chairwoman, National American Indian Housing Council); H.R. 205, *the HEARTH Act of 2011: Hearing Before the Subcomm. on Indian and Alaska Native Affairs of the H. Natural Resources Comm.*, 112th Cong. 20–21 (2011) (statement of Floyd Tortalita, Vice-Chairman, National American Indian Housing Council); *S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011: Hearing Before S. Comm. on Indian Affairs*, 112th Cong. 59 (2011) (statement of Robert Tippeconnie, Southern Plains Area Vice President, National Congress of American Indians).
[79] Pub. L. No. 112–151, 126 Stat. 1150. Section 2 of the HEARTH Act amends 25 U.S.C. § 415 by adding at the end a new subsection (h), authorizing tribal leasing of surface tribal trust lands without approval of the Secretary if done pursuant to tribal regulations that have been approved by the Secretary. The HEARTH Act is essentially the same authority as provided in the Navajo Nation Trust Land Leasing Act of 2000 (which is set forth in subsection (e) of section 415), except that it is available for all Indian tribes with tribal trust lands.
[80] HEARTH Act § 2.
[81] *Id.*

fects on the tribe, marketability of the minerals, and environmental, social, and cultural effects on the tribe."[82] She concludes that, while "failure to consider or adequately account for specified factors might subject the government to damages for breach of trust," relying on "the good faith of the government can be a dangerous thing" given the outcome of United States v. Navajo Nation[83] and that "tribal trust in the government may, and should be, a thing of the past. . . . Tribes need, as a practical matter if nothing else, to look out for their own interests."[84] Again, despite the fact that the recently enacted HEARTH Act has a very explicit and direct liability waiver clause,[85] the Indian tribes vigorously supported the adoption of the Act in 2012, suggesting that many tribes have reached some level of comfort with the implications of these clauses.

At the legislative hearing held by the Committee on S. 2132, the Administration expressed concerns about the waiver of liability provisions in the bill and recommended replacing the waiver of liability provisions that apply to tribal energy resource agreements with the waiver of liability provision in the HEARTH Act.[86] The Administration testified the waiver of liability under a TERA and under the HEARTH Act is "slightly different language to reach the same basic meaning" and that it "doesn't accomplish much difference." The Committee strongly disagrees. The HEARTH Act has a liability waiver that is broader than the TERA liability waiver. The HEARTH Act absolves the United States of liability "for losses sustained by any party to a lease executed pursuant to tribal regulations" approved by the Secretary under the HEARTH Act.[87] In contrast, for TERAs, both under the ITEDSDA and S. 2132, the United States is only absolved of liability "for any negotiated term of a lease, business agreement, or right-of-way executed pursuant . . . to a tribal energy resource agreement."[88] When an Indian tribe is operating under a TERA, the United States is still liable for any actions or losses that are not a negotiated term, whereas when a tribe is operating under regulations approved by the Secretary under the HEARTH Act the liability of the United States is much more limited.[89] The Committee is concerned that adopting the waiver of liability in the HEARTH Act could compromise the waiver of liability applicable to TERAs that was carefully negotiated and enacted in Title V of the Energy Policy Act of 2005.[90] For these reasons, the Committee continues to support the liability language contained in ITEDSDA and as clarified in S. 2132.

---

[82] Royster, *supra* note 67 at 1099–1100.

[83] 537 U.S. 488 (2003).

[84] Royster, *supra* note 67 at 1100–1101. However, to impose liability on the government, a court would have to find a way around the express waiver in 25 U.S.C. § 2103(e).

[85] "The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1)." HEARTH Act § 2.

[86] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs*, 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior).

[87] Pub. L. No. 112–151, 126 Stat. 1150 (codified at 25 U.S.C. § 415(h)(7)(A)).

[88] 25 U.S.C. § 3504(e)(6)(D).

[89] "Negotiated term is defined as "any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement." 25 U.S.C. § 3504(e)(6)(D)(i).

[90] Energy Policy Act of 2005, Pub. L. No. 109–58, Title V, 119 Stat. 594 (2005).

## KEY PROVISIONS OF THE BILL AS ORDERED REPORTED

At a business meeting convened on May 21, 2014, the Committee approved a number of amendments to the bill and ordered the bill, as amended, to be reported favorably. The following is a description of the key provisions of the bill as ordered reported.

*Amendments to the TERA process of the ITEDSDA*

Section 103 of the bill would make a number of amendments to the TERA process of the ITEDSDA that are intended to address tribal concerns raised in the outreach regarding the bill, including the concerns discussed above. The most significant amendments to the ITEDSDA are summarized below.

*a. Manner of TERA taking effect*

The bill would amend the ITEDSDA to change the manner in which a TERA goes into effect. Under current law, the Secretary must approve or disapprove a proposed TERA within 270 days of its receipt by the Secretary.[91] Under the bill, a TERA would go into effect automatically on the 271st day after its delivery to the Secretary unless the Secretary acts first to disapprove the TERA for one of the reasons stated in the ITEDSDA. If the Secretary does not act to disapprove the TERA before the 271st day, the TERA goes into effect. A revised TERA will go into effect on the 91st day unless it is disapproved by the Secretary for one of the reasons stated in the ITEDSDA.

*b. Reasons for disapproving a TERA*

Under S. 2132, there are only 4 reasons for disapproving a proposed TERA (3 of which are in current law): (1) the Indian tribe fails to demonstrate capacity; (2) a provision of the TERA would violate applicable Federal law;[92] (3) the TERA does not include the required periodic review and evaluation provisions;[93] and (4) the TERA does not include any of the required enumerated provisions.[94]

*c. Categorical exclusions*

The bill would amend section 3504(e) of the ITEDSDA[95] to clarify that a tribe may identify actions that are categorically excluded from the review process.

*d. Scope of authorized development on tribal land under a TERA*

The bill would amend section 3504(e)(a)(1) by (1) clarifying that the authorized electrical generation facilities include those that produce energy from renewable resources; (2) clarifying that the energy resources that may be processed or refined under a TERA may include resources produced from non-tribal lands, as long as "at least a portion" of the resources have been developed or pro-

[91] 25 U.S.C. § 3504(e)(2)(A).
[92] This reason is new. It is added because under the bill, a TERA goes into effect automatically if the Secretary does not disapprove it on the basis of one of the other 3 statutory reasons before the 271st day.
[93] 25 U.S.C. § 3504(e)(2)(D).
[94] 25 U.S.C. § 3504(e)(2)(B)(iii).
[95] Specifically, 25 U.S.C. § 3504(e)(2)(B)(iii).

duced from tribal land; and (3) authorizing agreements under a TERA for pooling, unitizing or communitizing a tribe's energy mineral resources on tribal land with any other energy mineral resources, whether in trust or restricted or unrestricted fee status. The other energy resources may be owned by a tribe, individual Indian or any other person or entity, if consent is obtained from the owner.

*e. Capacity determination*

Under current law, the 270-day period for approving or disapproving a TERA also governs the time within which the Secretary determines a tribe's capacity to regulate energy development on its tribal lands. The bill would require that a preliminary capacity determination be made within 120 days of the date the TERA is submitted to the Secretary.

*f. Deeming of tribal capacity*

The bill would add a new provision that would consider an Indian tribe to have sufficient capacity if the Secretary finds that the tribe has carried out, for 3 consecutive years without material audit exceptions, a contract or compact under the Indian Self-Determination and Education Assistance Act[96] that includes activities related to the management of the environment, tribal land, realty, or natural resources, or if the Indian tribe has carried out approval of surface leases under the HEARTH Act without a finding of a compliance violation within the previous calendar year.

*g. Statement of reasons for disapproval*

Current law requires the Secretary to "notify the Indian tribe in writing of the basis for the disapproval [of a proposed TERA]; . . . identify what changes or other actions are required to address the concerns of the Secretary; and . . . provide the Indian tribe with an opportunity to revise and resubmit" the TERA.[97] The bill would clarify this notice by requiring a detailed written explanation of each reason for disapproval and the revisions or changes to the TERA necessary to address each reason.

*h. Trust responsibility*

The bill would clarify the liability waiver clause in section 3504(e)(6) principally by (1) including language indicating that the obligations of the Secretary under section 3504 are part of the trust obligation of the United States, and (2) adding a clause at the end to the effect that the waiver clause does not absolve, limit, or otherwise affect "the liability, if any, of the United States" for terms that are not "negotiated terms" or for "losses that are not the result of a negotiated term, including losses resulting from the failure of the Secretary to perform an obligation of the Secretary under this section." These changes are not intended to affect the substance of section 3504(e)(6) in current law, but to clarify that the liability waiver clause reaches only losses resulting from "negotiated terms" and that it is not a blanket waiver covering all losses.

[96] 25 U.S.C. §§ 450 *et seq*.
[97] 25 U.S.C. § 3504(e)(4).

*i. Interested party petitions*

The bill would make clarifying amendments to section 3504(e)(7) relating to petitions to the Secretary by "interested parties." The bill would clarify that the petitioner must demonstrate his or her status as an interested party with "substantial evidence" (current law is silent on what kind of showing must be made). The bill would also clarify that the Secretary must determine interested party status before proceeding to the question of whether the Indian tribe is or is not out of compliance with the TERA. Finally, the bill would require the Secretary to dismiss the petition if the Indian tribe and the interested party agree to resolve the issues in the petition between themselves.

*j. Financial assistance*

The bill would add a new subsection (g) to section 3504, "Financial Assistance in Lieu of Activities by the Secretary." This provision, which is modeled after a provision in the Indian Self-Determination and Education Assistance Act,[98] would require the Secretary to make available to the Indian tribe any amounts that the Secretary saves as a result of the tribe carrying out a TERA. Accordingly, to the extent that the Secretary no longer has to perform a function or activity because the tribe is performing the function or activity itself, and as a result realizes a savings, the funds saved must be provided to the tribe to carry out the TERA. The bill would require the Secretary to develop a regulatory methodology for calculating any savings for purposes of this provision.

*k. Authorizing amendments to approved TERAs*

The bill would allow an Indian tribe to amend an approved TERA to assume authority for approving leases, business agreements, and rights-of-way for development of another energy resource by negotiating with the Secretary an amendment to an approved TERA.

*Other Amendments to the ITEDSDA*

The bill would make other amendments to the ITEDSDA, both technical and substantive in nature, which are unrelated to the TERA process. The following is a summary of the more substantive amendments.

*a. Tribal energy development organization*

The bill would amend the definition section of the ITEDSDA (section 3501(11)) to provide that "tribal energy development organization" includes corporations organized under section 17 of the Indian Reorganization Act of 1934[99] and section 3 of the Oklahoma Indian Welfare Act[100] for purposes of the ITEDSDA.

*b. Well spacing; technical assistance*

The bill would amend the ITEDSDA section establishing the Department of the Interior Indian Energy Program[101] to require the Secretary (1) to consult with an Indian tribe before adopting or ap-

[98] 25 U.S.C. § 450j–1(n).
[99] 25 U.S.C. § 477.
[100] 25 U.S.C. § 503.
[101] 25 U.S.C. § 3502(a).

proving well-spacing plans affecting its energy resources and (2) to provide technical assistance to Indian tribes in planning energy resource development.

*c. Energy development agreements and rights-of-way between the tribe and a tribal organization*

Section 103 of the bill would amend section 3504(a)(2) to allow energy development agreements and rights-of-way with terms that do not exceed 30 years (or in the case of an oil and gas lease, 10 years and so long thereafter as oil or gas are produced in paying quantities) between the Indian tribe and a tribal energy development organization that is majority owned and controlled by the tribe—and has been certified as such by the Secretary [102]—without approval by the Secretary. Such a lease or business agreement with a "certified" tribal energy development organization would be authorized without Secretarial approval even in the absence of a TERA. In effect, this amendment contemplates that an agreement with a certified tribal energy development organization should be treated as an agreement with the Indian tribe itself or with an agency or instrumentality of the tribe for purposes of energy resource development on its tribal land.[103] Under current law, a decision by the Indian tribe to develop its own resources (i.e., without relying on a lease or agreement with a third, non-tribal party) on its own tribal land does not require approval by the Secretary.

*d. Appraisals*

The bill would add a new section at the end of the ITEDSDA authorizing appraisals of fair market value of energy resources held in trust for an Indian tribe or by the tribe subject to Federal restrictions against alienation, for purposes of any transaction that requires approval of the Secretary, to be prepared by (1) the Secretary, (2) the affected tribe, or (3) a certified, third-party appraiser pursuant to a contract with the tribe. The Secretary would have 45 days within which to approve an appraisal prepared by the Indian tribe or its contractor or, if disapproved, written notice of each reason for the disapproval and how the appraisal should be corrected. The Secretary is required to publish regulations for implementing the section.

*Other Amendments to Federal Laws*

*a. Amendment to Federal Power Act*

Section 201 of the bill would amend section 7(a) of the Federal Power Act [104] to make the provisions of that section applicable to Indian tribes (along with States and municipalities). However, this section of the bill also provides that it does not affect preliminary permits or original licenses issued before the enactment date of the

[102] 25 U.S.C. § 3504(h). The certification by the Secretary is intended to provide any minority investor in the organization with the certainty that the organization may enter into leases, agreements, and rights-of-way with the Indian tribe without Secretarial approval.

[103] This tribal agency or instrumentality status is assured by the certification process under section 3504(h), as added by section 103 of the bill. This new subsection would require the Secretary to determine that (1) the organization is organized under the laws of the Indian tribe and subject to its jurisdiction and authority; (2) the organization is majority owned and controlled by the tribe; and (3) the organizing document of the organization requires that the tribe own and control a majority interest in the organization at all times.

[104] 16 U.S.C. § 800(a).

bill or any application for an original license if the Commission has issued a notice of accepting the application for filing before the enactment date of the bill.

*b. Indian Energy Efficiency*

Section 106 of the bill would amend Part D of Title III of the Energy Policy and Conservation Act[105] by adding a new section authorizing grants to Indian tribes to carry out a tribal energy efficiency program as described in the new section. The funding would be taken from funding appropriated pursuant to section 365(f) of Title III of the Energy Policy and Conservation Act. Of those funds, "not less than 2.5%" must be allocated for the tribal program.

*c. Amendments to Federal Weatherization Program*

Section 203 of the bill would amend the Energy Conservation and Production Act[106] to facilitate direct funding of Indian tribes to carry out the weatherization program. The amendment leaves intact the amount authorized to be reserved from State funding under current law but authorizes direct funding (1) if requested by the tribal organization and (2) the Secretary of Energy determines that the low-income members of the Indian tribe will be equally or better served by direct funding rather than through the State. The bill would also create a presumption that a tribally designated housing entity in good standing under the Native American Housing Assistance and Self-Determination Act of 1996 would presumptively qualify as equally or better serving the low-income members of an Indian tribe.

*d. Biomass demonstration projects*

Section 202 of the bill would amend the Tribal Forest Protection Act of 2004[107] (TFPA) to add a new section at the end of that Act authorizing a biomass demonstration project for Indian tribes. This section would also authorize a similar demonstration project for Alaska Native corporations (but not as part of the amendment to the TFPA).

With respect to the demonstration projects under the TFPA, the bill would require that at least 4 new demonstration projects be carried out from 2013 to 2017, with Indian tribes to be selected based on several enumerated criteria. The bill would allow participating tribes to enter into stewardship contracts with the Secretary of Agriculture or of the Interior that include Federal lands for terms not to exceed 20 years and a renewal term not to exceed 10 years, as opposed to the 10-year limitation on those contracts under current law.[108] A longer term is authorized under the bill to provide sufficient time to recover the investment that is necessary to carry out a biomass operation.

Section 202 would authorize similar demonstration projects with Alaska Native corporations (as defined in section 3 of the Alaska Native Claims Settlement Act)[109] with terms not to exceed 20 years and a renewal term of up to 10 years. The TFPA defines "In-

[105] Energy Policy and Conservation Act of 1975, Pub. L. No. 94–163, 89 Stat. 871 (codified at 42 U.S.C. §§ 6201 *et seq.*).
[106] 42 U.S.C. § 6863(d).
[107] Pub. L. No. 108–278, 118 Stat. 868 (2004).
[108] *See* 16 U.S.C. § 2104(c)(2) note.
[109] 43 U.S.C. § 1602(m).

dian forest land or rangeland" as "land that is held in trust by, or with restriction against alienation by, the United States" . . . so the opportunity for Alaska tribes and Alaska Native corporations to participate in programs under the Act is virtually non-existent.[110] Subsection 202(c) of this bill would assure that Alaska tribes could qualify and have the opportunity to participate in the biomass demonstration projects under this bill.

*e. Amendments to Long-Term Leasing Act for the Navajo Nation*

Section 205 of the bill would amend subsection (e) of the Long-Term Leasing Act,[111] which regards the Navajo Nation, to remove a limitation in that subsection on the exploration, development, or extraction of mineral resources. With this limitation in current law, subsection (e) authorizes only surface leases without approval of the Secretary. The bill would amend the subsection so that it would also authorize mineral leasing with a term not to exceed 25 years or, in the case of oil and gas, for 10 years plus any additional time that "the Navajo Nation determines to be appropriate where oil or gas is produced in a paying quantity."

*f. Extension of tribal lease period for the Crow Tribe of Montana*

Section 206 of the bill would add the Crow Tribe to the list of Indian tribes that are authorized under 25 U.S.C. § 415(a) to enter into public, religious, educational, recreational, residential, or business leases for terms up to 99 years, with the approval of the Secretary.

*g. Trust status of lease payments*

Section 207 of the bill would require the Secretary, upon request of the Indian tribe or individual Indian, to hold in trust any advance payments, bid deposits, or other earnest money received by the Secretary of the Interior, in connection with the review and Secretarial approval of a sale, lease, or permit. Upon approval or disapproval of the conveyance instrument, the funds and the interest would be disbursed to the appropriate party.

## LEGISLATIVE HISTORY

On March 13, 2014, Senator John Barrasso (R–WY) introduced S. 2132, along with Senators Michael Enzi (R–WY), John Hoeven (R–ND), John McCain (R–AZ), and John Thune (R–SD). Senators Lisa Murkowski (R–AK), Jerry Moran (R–KS), John Walsh (D–MT), Jon Tester (D–MT), Deb Fischer (R–NE) and Mark Udall (D–CO) were later added as co-sponsors. The bill was referred to the Committee on Indian Affairs. The Committee held a legislative hearing on the bill on April 30, 2014. At a business meeting held on May 21, 2014, five amendments to the bill were offered and adopted, and the Committee ordered the bill, as amended, favorably reported.

---

[110] Pub. L. No. 108–278 § 2(a)(2), 118 Stat. 868 § 2(a)(2) (2004).
[111] 25 U.S.C. § 415(e).

## SUMMARY OF THE AMENDMENTS

At the business meeting held on May 21, 2014, the Committee approved a number of amendments to the bill.[112] The amendments included one substitute amendment by Vice Chairman Barrasso, three amendments by Chairman Tester, and one amendment by Senator Udall of New Mexico.

The Committee approved a substitute amendment from Senator Barrasso that, among other things, would address concerns raised by the Department of the Interior Assistant Secretary-Indian Affairs, Kevin Washburn, at the legislative hearing held on April 30, 2014.[113] In addition to making several conforming and technical changes,[114] the substitute amendment would make several substantive changes.

First, the substitute amendment requires a tribal energy development organization (TEDO) to be majority owned and controlled "by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes *the tribal land of which is being developed*)" (emphasis added). Under the bill as introduced, the TEDO could be majority owned and controlled by "the Indian tribe (or the Indian tribe and 1 or more other Indian tribes)." At the legislative hearing for S. 2132, Assistant Secretary Washburn expressed concern about the TEDO concept in the bill.[115] Following the legislative hearing, the Department of the Interior staff specified that the concern was allowing a TEDO to enter into leases, business agreements, or rights-of-way, without Secretarial approval, with entities that could be majority owned and controlled by any combination of multiple Indian tribes without regard to who owned (and could therefore govern activities occurring on) the land. Vice Chairman Barrasso's amendment would require the TEDO to be majority owned and controlled by the Indian tribe or tribes whose tribal land is being developed.

Under S. 2132 as introduced, the Secretary would be required to determine whether an Indian tribe has sufficient capacity to regulate the development of the energy resources specified in the TERA application within 120 days of the tribe submitting the TERA application. The purpose of this language is to give the Indian tribe notice of any capacity concerns early in the process, so that it does not have to wait until the expiration (or near expiration) of the 270 days only to learn that the Secretary has these concerns. In his testimony on S. 2132, Assistant Secretary Washburn stated that the process of determining capacity likely cannot be accomplished within 120 days unless the issue of capacity is excluded from the notice and comment requirement.[116] Vice Chairman Barrasso's amend-

---

[112] Business Meeting on S. 1474, S. 1603, S. 1622, S. 1818, S. 2040, S. 2132, and H.R. 2388 Before the S. Comm. On Indian Affairs, 113th Cong. (2014).

[113] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs,* 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior).

[114] The technical corrections fix cross reference errors in two places: (1) on line 12 of page 30, "4" is stricken and "103" is inserted in its place and (2) on line 13 of page 47 "(4)" is stricken.

[115] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs,* 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior).

[116] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing*

ment would require the Secretary to make a *preliminary* capacity determination within 120 days of the submission of a TERA. The Secretary would then have the opportunity to issue a final capacity determination anytime throughout the application process in compliance with the law. This amendment would still give Indian tribes early notice of any capacity concerns while providing the Secretary with an ample opportunity to make the required determinations.

Additionally, the substitute amendment would require the Secretary to consider an Indian tribe to have sufficient capacity if the tribe successfully carries out for three consecutive years a contract or compact under the Indian Self-Determination and Education Assistance Act [117] relating to the management of the environment, tribal land, realty, or natural resources, or, alternatively, by carrying out approval of surface leases under the HEARTH Act for one calendar year without a finding of a compliance violation. Under the bill as introduced, the Secretary would be required to consider the Indian tribe to have sufficient capacity only if the Indian tribe has carried out a contract or compact under the Indian Self-Determination and Education Assistance Act [118] relating to the management of tribal land. At the legislative hearing on S. 2132, Assistant Secretary Washburn recommended streamlining, eliminating, or refining the approach to capacity determinations including (1) stating "a capacity determination could be based on whether a tribe contracts BIA realty functions;" (2) suggesting "Tribal authority for approving tribal leases . . . under the HEARTH Act may also serve as a clear capacity criterion for a Tribal Energy Resource Agreement" because such authority is based on tribal leasing under regulations that "include environmental provisions;" and (3) stating that other considerations for capacity for environmental review and compliance could include "experience of the Indian tribe in managing natural resources." [119] The amendment takes into consideration the concerns and suggestions of the Department.

The substitute amendment would allow an Indian tribe to amend an approved TERA to assume authority for approving leases, business agreements, and rights-of-way for development of additional energy resources by negotiating with the Secretary an amendment to an approved TERA. This additional authority was recommended by the Department in testimony by Assistant Secretary Washburn at the legislative hearing on S. 2132.[120] The substitute amendment would also require the Secretary to implement regulations setting

---

*Before the S. Comm. on Indian Affairs,* 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior).

[117] 25 U.S.C. § 450 et seq.

[118] 25 U.S.C. § 450 et seq.

[119] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs,* 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior).

[120] *Legislative Hearing, to receive testimony on the following bill: S. 2132, to amend the Indian Tribal Energy Development and Self-Determination Act of 2005, and for other purposes: Hearing Before the S. Comm. on Indian Affairs,* 113th Cong. (2014) (testimony by Kevin Washburn, Assistant Secretary-Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior) ("It therefore would be helpful to clarify that a tribe that wants to perform only a limited function initially can phase in new, related functions over time as the tribe's capacity increases, by amending its initial, approved TERA and not by having to duplicate any of the still relevant elements of its initial TERA application")

forth the process to be followed by an Indian tribe amending an approved TERA.

Finally, the substitute amendment would prohibit the Secretary from denying a TERA or any amendment to a TERA, and from limiting the effect or implementation of 25 U.S.C. § 3504 due to lack of promulgated regulations. Further, the substitute amendment would allow an Indian tribe to submit a TERA application upon enactment of this bill, as opposed to waiting until regulations are promulgated as required under current law.

At the business meeting held on May 21, 2014, the Committee also approved three amendments from Chairman Tester. One amendment would allow tribal organizations that operate a Department of Housing and Urban Development Indian housing program in good standing to be presumed to "equally or better" serve the low income members of an Indian tribe. The second amendment from the Chairman would add the Crow Tribe to the list of Indian tribes that are authorized under 25 U.S.C. § 415(a) to enter into public, religious, educational, recreational, residential, or business leases for terms up to 99 years, with the approval of the Secretary. The third amendment would require the Secretary, upon the request of the tribe, to hold in trust any advance payments, bid deposits, or other earnest money received by the Secretary, in connection with the review and Secretarial approval of a sale, lease, or permit, until the contract or other instrument is approved or disapproved by the Secretary.

Finally, Senator Udall of New Mexico's amendment would extend the Energy Department's State Energy Program to Indian tribes to allow grants to tribes seeking to increase energy efficiency in transportation, building or other sectors.[121] The minimum amount of funding to be allocated to tribes is not less than 2.5 percent of the funds appropriated for the State Energy Conservation Plans under the Energy Policy and Conservation Act.[122]

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 sets forth the short title, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2014" (hereinafter, the "Act").

*Section 2. Table of contents*

Section 2 sets forth the table of contents.

*Section 101. Indian tribal energy resource development*

Section 101(a) of the Act amends section 2602(a) of the Energy Policy Act of 1992 (1992 EPA) by (1) adding a requirement that the Secretary of the Interior consult with Indian tribes before approving well-spacing programs that affect their energy resources; (2) adding a new paragraph that requires that Secretary to provide technical assistance to Indian tribes interested in developing plans for electrification, permitting of oil and gas operations and renewable facilities, energy efficiency programs, electrical generation and

[121] Business Meeting on S. 1474, S. 1603, S. 1622, S. 1818, S. 2040, S. 2132, and H.R. 2388 Before the S. Comm. On Indian Affairs, 113th Cong. (2014).
[122] Pub. L. No. 94–163.

other activities related to energy, plans for protecting natural, cultural and other resources, and any other plans that would assist an Indian tribe in the development or use of energy resources; and (3) requiring the Secretary to carry out the program under section 2602 of the 1992 EPA in cooperation with the Department of Energy Office of Indian Energy Policy and Programs.

Section 101(b) of the Act amends section 2602(b)(2) of the 1992 EPA to add "intertribal organizations" to the eligible grantees that can participate in the loan guarantee program under that section (in addition to Indian tribes and tribal energy resource development organizations), and to add, as an authorized use of grant funds, "activities to increase capacity of Indian tribes to manage energy development and efficiency programs."

Section 101(c) of the Act amends section 2602(c) of the 1992 EPA to include tribal energy development organizations to participate in the loan guarantee program under that section. This section also requires the Secretary of Energy to adopt regulations to carry out the subsection not later than 1 year after the date of enactment of these amendments.

*Section 102. Indian tribal energy resource regulation*

Section 102 of the Act amends section 2603(c) of the 1992 EPA to require the Secretary of the Interior to provide assistance, information and expertise to a tribal energy development organization (i.e., in addition to an Indian tribe) when issuing energy resource development grants under that title.

*Section 103. Tribal energy resource agreements*

Section 103 of the Act makes several amendments to section 2604 of the 1992 EPA, relating to tribal energy resource agreements ("TERAs").

Section 103(a)(1) clarifies that the applicable lease or business agreement may also include facilities that produce electricity from renewable resources and facilities to process or refine energy resources that "at least a portion of which have been developed on or produced from tribal land." This section also allows leases and business agreements to include provisions for the voluntary pooling, unitization or communization of the Indian tribe's energy resources with the energy resources of other parties.

This section provides that a lease or business agreement between the Indian tribe and a tribal energy development organization, majority owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed) does not require review and approval of the Secretary under 25 U.S.C. § 81 if the lease or business agreement is for a term not to exceed 30 years or, in the case of an oil and gas lease, 10 years and so long thereafter as oil and gas is produced in paying quantities.

Section 103(a)(2) clarifies that the applicable right-of-way may also include facilities that produce electricity from renewable resources. This section also provides that a right-of-way between the Indian tribe and a tribal energy development organization, majority owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed) does not require review and approval of the Secretary

under 25 U.S.C. § 81 if the lease or business agreement is for a term not to exceed 30 years. Section 103(a)(2) also clarifies that the right-of-way may serve "the purposes, or facilitate in carrying out the purposes, of any lease or agreement entered into for energy resource development on tribal land."

Section 103(a)(3) makes conforming amendments to section 2604(d) of the 1992 EPA to clarify when a lease, business agreement, or right-of-way is valid under a TERA.

Section 103(a)(4) streamlines the TERA approval process. Under current law, the Secretary must either approve or disapprove a TERA within 270 days of the date on which an Indian tribe submits the TERA. Section 103(a)(4) provides that a TERA would automatically take effect 271 days after it is submitted by an Indian tribe unless the Secretary disapproves it before then. A revised TERA automatically takes effect 91 days after it is submitted to the Secretary unless disapproved.

Under this section, the Secretary is required to disapprove the TERA only if the Secretary finds that (1) the Indian tribe has failed to demonstrate capacity; (2) the TERA would "violate applicable Federal law or a treaty of the Indian tribe; or (3) the TERA fails to include any of the provisions mandated for TERAs under section 2604(e), such as establishing an environmental review process or allowing for periodic review by the Secretary.

This section also clarifies and expedites the process for determining tribal capacity for a TERA. Current law requires the Secretary to determine within 270 days whether an Indian tribe has demonstrated sufficient capacity to regulate the development of energy resources. Section 103(a) changes these requirements. First, this section requires the Secretary to determine whether "the Indian tribe has not demonstrated . . . sufficient capacity to regulate the development of the specific 1 or more energy resources identified for development under the [TERA]." Second, the Secretary is required to make a preliminary determination within 120 days of the date on which the Indian tribe submits a TERA unless the Secretary and the tribe agree to extend that time period. Third, section 103(a)(4) provides that a tribe will be deemed to have demonstrated sufficient capacity if (1) the tribe has a record of managing programs relating to the environment, tribal land, realty, or natural resources under the Indian Self-Determination and Education Assistance Act in a fiscally responsible manner for three consecutive years; (2) the tribe has successfully carried out approval of surface leases under the HEARTH Act for the previous year without a finding of a compliance violation; or (3) the Secretary fails to make the capacity determination within the applicable time period.

This section clarifies that the mitigation measures required for a TERA are to be determined in the tribe's discretion and adds a provision allowing the Indian tribe to identify categorical exclusions from the environmental review process.

This section clarifies that, if the Secretary disapproves a TERA, the disapproval must include a detailed, written explanation of the reasons for the disapproval.

This section clarifies that the provisions of this section do not absolve the United States from liability arising from terms that are

not negotiated terms between the Indian tribe and a third party or losses that are not the result of the negotiated terms.

This section clarifies that an interested party who is eligible to challenge a tribe's compliance of a TERA must demonstrate with substantial evidence that the party would sustain an adverse environmental impact. This section further clarifies the process for reviewing a petition by an interested party by requiring the Secretary to first determine whether the petitioner is an "interested party" and then whether the Indian tribe is in compliance with the TERA. This section also adds a provision requiring the Secretary to dismiss the petition if the petitioner and the Indian tribe have agreed to a resolution of the issues in the petition.

This section authorizes an Indian tribe to amend an approved TERA to assume authority over another energy resource that is not included in an approved tribal energy resource agreement, and requires the Secretary to promulgate regulations implementing the process and requirements for such an amendment.

This section prohibits the Secretary from denying a TERA or any amendment to a TERA, and from limiting the effect or implementation of this section due to lack of promulgated regulations.

Section 103(a)(5) makes a technical amendment to renumber a paragraph.

Section 103(a)(6) requires the Secretary to provide funding to the Indian tribe in an amount equal to any savings that the United States will realize as a result of the Indian tribe carrying out a TERA. The funding would be made available under a separate funding agreement. The methodology for determining the funding would be developed through regulations.

This section also sets forth the requirements for certification by the Secretary as a tribal energy development organization. The Secretary shall approve a tribal application for certification if (1) the tribe has carried out contracts or compacts relating to tribal land under the Indian Self-Determination and Education Assistance Act for three years without material audit exceptions; (2) the entity is organized under the laws of the Indian tribe and subject to its jurisdiction and authority; (3) the majority interest in the entity is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed); and (4) the majority interest ownership and control is required under the organizing documents of the organization.

If the Secretary approves an application for certification, this section requires the Secretary is required to issue a certification, deliver a copy of the certification to the Indian tribe, and publish the certification in the Federal Register.

This section clarifies that the TERA provisions do not waive tribal sovereign immunity.

Section 103(b) of the Act requires the Secretary to adopt regulations governing the amendments to the TERA process made in this section.

*Section 104. Technical assistance for Indian tribal governments*

Section 104 amends section 2602(b) of the Energy Policy Act of 1992 to require the Secretary to collaborate with the Directors of the National Laboratories in making the full array of technical and

scientific resources of the Department of Energy available for tribal energy activities and projects.

*Section 105. Conforming amendments*

Section 105 sets forth a number of conforming amendments intended to make other provisions of the Energy Policy Act of 1992 consistent with the amendments contained in sections 101, 102, and 103 of this bill.

In addition, section 105 expands Title V's definition of "tribal energy development organization" to include any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe, including organizations incorporated pursuant to section 17 of the Indian Reorganization Act of 1934 or section 3 of the Oklahoma Indian Welfare Act.

*Section 106. Indian energy efficiency*

Section 106 adds to Part D of Title III of the Energy Policy and Conservation Act an Indian Energy Efficiency Program to provide grants to assist Indian tribes in implementing strategies to increase energy efficiency and develop alternative and renewable energy resources.

Section 106 requires the Secretary to allocate not less than 2.5 percent of the funds authorized to be appropriated for each fiscal year under section 365(f) to be distributed to Indian tribes in accordance with subsection (d).

Section 106 creates guidelines under subsection (d) that specify how the grants are to be distributed. The Secretary is required to establish a competitive process for providing grants that gives priority to projects that (1) increase energy efficiency and energy conservation rather than new energy generation projects; (2) integrate cost-effective renewable energy with energy efficiency; (3) move beyond the planning stage and are ready for implementation; (4) clearly articulate and demonstrate the ability to achieve measurable goals; (5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and (6) maximize the creation or retention of jobs on Indian land.

This section authorizes Indian tribes to use grants to achieve the purposes of the Energy Efficiency Program and enumerates what potential uses for the grants may include. To apply for a grant under this section, an Indian tribe would submit to the Secretary a proposed energy efficiency and conservation strategy. The proposed strategy would be required to include a description of (1) the goals of the Indian tribe for increased energy efficiency and conservation; (2) the manner in which the proposed strategy complies with the restrictions in the use of the grants; and (3) the manner in which a grant will allow the Indian tribe to fulfill the goals of the proposed strategy.

Section 106 requires the Secretary to approve or disapprove a proposed conservation strategy by not later than 120 days after the date of submission. If the Secretary disapproves a proposed strategy the Secretary would provide to the Indian tribe the reasons for the disapproval and the Indian tribe may revise and resubmit the proposed strategy as many times as necessary.

Section 106 limits the amount an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements, to an amount equal to the greater of 10 percent of the administrative expenses or $75,000.

Under this section, an Indian tribe receiving a grant under section 106 is required to submit to the Secretary a report describing the status of development and implementation of the energy efficiency and conservation strategy and an assessment of energy efficiency gains.

*Section 201. Issuance of preliminary permits and licenses*

Section 201 amends section 7(a) of the Federal Power Act. Under current law, the Federal Energy Regulatory Commission (FERC) is authorized to give States and municipalities preference when issuing preliminary permits or original licenses (where no preliminary permit has been issued) for hydroelectric projects. Section 201(a) authorizes FERC to give the same preference to Indian tribes.

Section 201(b) states that the tribal preference for hydroelectric projects would not affect any preliminary permit or original license (where no preliminary permit has been issued) issued before the date of enactment of the bill. It also states that this preference would have no effect on applications for original licenses (where no preliminary permit has been issued) deemed complete by FERC before the date of enactment of the bill.

Section 201(c) defines "Indian tribe" for section 7(a) of the Federal Power Act to have the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act.

*Section 202. Tribal biomass demonstration project*

Section 202 of the Act establishes a biomass demonstration project for Indian tribes and Alaska Native corporations to promote biomass energy production.

Section 202(b) amends the Tribal Forest Protection Act of 2004 to promote biomass energy production on Indian forest land and in nearby communities.

This subsection requires the Secretary of the Interior (or, where applicable, the Secretary of Agriculture) to enter into stewardship contracts or similar agreements for a term of up to 20 years, and a renewal term of up to 10 years, with Indian tribes to harvest woody biomass from Federal land. During each year, beginning fiscal year 2015, at least four demonstration projects shall be carried out under these contracts or agreements.

This subsection requires the Secretary of the Interior and the Secretary of Agriculture to take into consideration a number of factors when considering a proposed demonstration project, such as whether a project would improve the forest health or watersheds of Federal land or Indian forest land or rangeland. The amendment excludes from the demonstration projects any merchantable logs that have been identified by the Secretary for commercial sale.

In carrying out the contracts under this subsection, the Secretary shall incorporate management plans in effect on Indian Forest land or rangeland of the respective Indian tribe into the agreement. The Secretary would be required to submit to Congress a report that

describes each individual application received and each contract and agreement entered into under this subsection.

Section 202(c) requires the Secretary to enter into a stewardship contract or similar agreement with 1 or more Alaska Native Corporations for each of fiscal years 2015 through 2019.

This subsection requires the Secretary to enter into a stewardship contract or similar agreement, for a term of up to 20 years, and a renewal term of up to 10 years, with 1 or more Alaska Native corporations, to carry out a demonstration project to promote biomass energy production on forest land of the Alaska Native corporations and in nearby communities providing reliable supplies of woody biomass from federal land.

Under subsection (c), the Secretary shall take into consideration a number of factors when considering a proposed demonstration project, such as whether a project would improve the forest health or watersheds of Federal land or Indian forest land or rangeland. The section excludes from the demonstration projects any merchantable logs that have been identified by the Secretary for commercial sale. The Secretary shall also submit to Congress a report that describes each individual application received and each contract and agreement entered into under this subsection.

*Section 203. Weatherization program*

Section 203 of the bill amends the Energy Conservation and Production Act to facilitate direct funding of Indian tribes to carry out the weatherization program. The amendment leaves intact the amount authorized to be reserved from State funding under current law but authorizes direct funding (1) if requested by the tribal organization and (2) the Secretary of Energy determines that the low-income members of the tribe will be equally or better served by direct funding rather than through the State. This section also creates a presumption that a tribally designated housing entity under section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 that has operated without material audit exceptions would equally or better serve the low-income members of the applicable Indian tribe.

*Section 204. Appraisals*

Section 204 amends Title XXVI of the Energy Policy Act of 1992 to require appraisals relating to the fair market value of tribal mineral or energy resources prepared by an Indian tribe or a certified third-party appraiser pursuant to a contract with the Indian tribe to be reviewed and accepted by the Secretary not later than 45 days unless the Secretary determines that the appraisal fails to meet standards created by the Secretary under this section. If the Secretary disapproves an appraisal, the Secretary is required to give written notice of the disapproval to the Indian tribe and a description of each reason for the disapproval and how the appraisal should be corrected.

*Section 205. Leases of restricted lands for Navajo Nation*

Section 205 amends subsection (e)(1) of the first section of the Long-Term Leasing Act to allow the Navajo Nation to enter into a lease for the exploration, development, or extraction of any mineral resources without the approval of the Secretary, if the lease is exe-

cuted under tribal regulations, approved by the Secretary and that meets certain term limits. This section further amends the Long-Term Leasing Act by extending the maximum authorized term for a business or agricultural lease from 25 years to 99 years for the Navajo Nation. Finally, this section requires the GAO to report within five years of enactment on the progress made in carrying out the amendment made by this subsection.

*Section 206. Extension of tribal lease period for the Crow Tribe of Montana*

Section 206 adds the Crow Tribe to the list of Indian tribes that are authorized under 25 U.S.C. § 415(a) to enter into public, religious, educational, recreational, residential, or business leases for terms up to 99 years, with the approval of the Secretary.

*Section 207. Trust status of lease payments*

Section 207 requires the Secretary, upon the request of the tribe, to hold in trust any advance payments, bid deposits, or other earnest money received by the Secretary, in connection with the review and Secretarial approval of a sale, lease, permit, or any other conveyance of any interest in any trust or restricted land of any Indian tribe or individual Indian. If the advance payment bid deposit or other earnest money received results from competitive bidding, only the funds of the successful bidder are to be held in trust, and only upon selection of the successful bidder. Upon Secretarial approval or disapproval of the contract or instrument, the amounts and interest would be disbursed to the Indian tribe or otherwise identified party. This section only applies to advance payments, bid deposits, or other earnest moneys received on or after the date of enactment of this Act.

## COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated June 23, 2014, was prepared for S. 2132:

*S. 2132—Indian Tribal Energy Development and Self-Determination Act Amendments of 2014*

S. 2132 would require the Secretary of the Interior to establish a grant program to assist tribes in the development of energy resources on tribal lands and to improve energy efficiency on Indian Reservations. The bill also would modify the process used to give tribes authority to manage the development of energy resources on tribal lands. Based on information provided by the affected agencies, CBO estimates that implementing the legislation would cost $15 million over the 2015–2019 period, assuming appropriation of the necessary amounts. Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

S. 2132 would require the Secretary to provide grants to help tribes develop alternative and renewable energy resources on tribal lands and to increase energy efficiency on Indian Reservations. Tribes could use those funds for various projects, including installing renewable energy technology in tribal buildings, developing energy efficiency goals, encouraging behavioral changes related to energy use among tribal members, and conducting energy audits of buildings on tribal lands. Based on information regarding the cost

of carrying out similar activities, CBO estimates that implementing the grant program would cost $3 million a year over the 2015–2019 period, assuming appropriation of the necessary amounts.

The bill also would modify the process tribes use to enter into energy resource agreements, which shift various management functions related to energy development on tribal lands from the federal government to tribes. Under the bill, if a tribe takes over the management of activities that would have been managed by the Department of the Interior, the Secretary would be required to pay the tribe an amount equal to the amount that the agency would have spent to carry out those activities. Because the bill would require the agency to make payments to the tribe only if the agency received appropriations to carry out those activities, CBO estimates that implementing that provision would have no net effect on the federal budget.

S. 2132 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Tribes would benefit from greater flexibility, grants, and technical assistance authorized by the bill for energy development. Any cost to tribes would be incurred voluntarily as a condition of receiving federal assistance or participating in a voluntary federal program.

On July 9, 2013, CBO transmitted a cost estimate for H.R. 1548, the Native American Energy Act, as ordered reported by the House Committee on Natural Resources on June 12, 2013. The two pieces of legislation contain several similar provisions, and the CBO cost estimates of those provisions are the same.

The CBO staff contacts for this estimate are Martin von Gnechten, Megan Carroll, and Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2132 would have a minimal impact on regulatory or paperwork requirements.

## EXECUTIVE COMMUNICATIONS

The Committee has not received any formal communication on S. 2132 from the Administration other than the written testimony from the Department of the Interior and the Department of Energy submitted at the Legislative Hearing on S. 2132 on April 30, 2014:

### TESTIMONY OF KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

> Good afternoon Chairman Tester, Vice-Chairman Barrasso and Members of the Committee. My name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on S. 2132, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2014."

S. 2132 is legislation to amend the Indian Tribal Energy Development and Self-Determination Act of 2005.

The Department believes that it is appropriate to consider amendments to Title V of the Energy Policy Act of 2005, relating to tribal energy resource agreements (TERAs). The Energy Policy Act sought to increase tribal self-governance over energy development. That Act authorized TERA which are designed to shift authority for the review, approval, and management of leases, business agreements, and rights-of-way for energy development on tribal lands from the Federal government to participating tribes. Sadly, however, the Energy Policy Act has not been successful. Indeed, since promulgation of the Department's TERA regulations in 2008, the Department has not received a single TERA application.

The Department supports the goal of increasing tribal self-governance in the area of energy and mineral development. The Department believes that environmentally responsible development of tribal energy resources is critical to the economic viability of many American Indian Tribes and to the sustainability of many Alaska Native villages. Energy and mineral development represents a near-term solution for many tribes to promote economic development, small business, capital investment, Indian-owned businesses, and job creation for tribal members. TERAs are designed to promote tribal sovereignty and economic self-sufficiency by establishing a process where tribes can assume a greater role in the development of their energy and mineral resources.

Key to a tribe's ultimate success under a TERA is its capacity to perform the functions and responsibilities outlined in a TERA—functions and responsibilities historically performed by the Department. Under existing law, the Department plays a critical role in determining a tribe's capacity to take on those functions. S. 2132 seeks among other things to simplify and expedite the TERA process. This is a laudable goal. While the Department supports this overall goal, the Department would like to work with the Committee to further improve S. 2132 as described below.

IMPLEMENTATION OF THE 2005 AMENDMENTS

As noted, the current TERA regime has not been successful. This is not for lack of effort by the Department. Under current regulations, a tribe can request a pre-application meeting with the Office of Indian Energy and Economic Development (OIEED) to discuss any regulatory or administrative activities it might wish to exercise through a TERA. These informal pre-application meetings include discussion of the required content of a TERA application, such as identifying the energy resources the tribe anticipates developing; what capacity, management, and regulation will be needed to develop the energy resource; and potential mechanisms for building the capacity and pursuing other activities related to the energy resource the tribe an-

ticipates developing. Since 2008, the Department has met with six tribes who have considered entering into a TERA. Of these tribes, one had active oil and gas development occurring on its reservation and was considering a TERA for further oil and gas development. The other tribes were considering renewable energy resource development. We understand that several tribes with renewable energy resources have expressed an interest in developing a TERA.

The Department supports several of the provisions in S. 2132:

- Sec. 101(a)(1)(E), requiring consultation with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe. The Department notes, however, that this consultation requirement could slow the timeframe for adoption or approval of well spacing programs or plans.
- Sec. 101(a)(4)(B), promoting cooperation with the Department of Energy's Office of Indian Energy Policy and Programs in providing assistance to tribes in development of energy plans. (The Department also believes that cooperation with other federal agencies is important and has made efforts to accomplish such cooperation, through the White House Native American Affairs Council.)
- Sec. 102(1) that adds "tribal energy development organization" as an eligible entity for grants under this section.
- Sec. 102(2) that adds "tribal energy development organization" as an eligible entity for technical assistance from the Department or eligible for financial assistance to procure technical assistance.
- Sec. 103(a)(1) that adds "production" to "facility" and specifically includes a facility that produces electricity from renewable energy resources. Energy resources developed on lands owned by individual Indians in fee, trust, or restricted status as well as energy resources developed on land owned by any other persons or entities may be included in leases, business agreements, and rights-of-way a tribe or tribal energy development organization may approve as long as a portion of the energy resources have been developed on tribal land. The amendment also expands "facility to process or refine energy resources" to specifically include renewable energy resources and to add energy resources that are "produced from," in addition to energy resources "developed on," tribal land. The amendment includes pooling, unitization, or communitization of the energy mineral resource(s) of the tribe with energy mineral resource(s) owned by individual Indians in fee, trust, or restricted status or owned by any other persons or entities.
- Sec. 103, which expands purposes for rights-of-way under a TERA beyond pipelines, electric transmission or distribution lines that serve electric generation, transmission or distribution facilities located on tribal land to include those lines that also serve an electric production facility or a facility located on tribal land that extracts,

produces, processes, or refines energy resources (not necessarily produced on tribal land) and lines that serve the purposes of or facilitate the purposes of any lease or business agreement entered into for energy resource production on tribal land.

- Sec. 103, which expands the time period for Secretarial approval of a revised TERA from 60 days to 90 days.
- Sec. 103, which provides that a Tribal Energy Resource Agreement remains in effect until rescinded by the tribe or Secretarial re-assumption.
- Sec. 103, which declines to waive the sovereign immunity of tribes.
- The Department also supports the provision that amends 25 U.S.C. 415(e) to allow the Navajo Nation to approve its own leases for business or agricultural purposes for 99 years. The Department is, however, concerned about the extent of the showing needed for the tribe to engage in mineral development (exploration, extraction and development) without Secretarial approval, as discussed further below.
- The Department supports the proposed changes to the existing environmental review process for TERAs, but we suggest that the Committee consider addressing environmental review similar to the approach Congress utilized in the HEARTH Act. Both the Department and the Council on Environmental Quality supported the HEARTH Act approach and the Department generally supports a similar approach here.

As noted, the Department is concerned with some of the provisions of S. 2132. The Department's concerns include the following issues:

*A. Allocation of liability*

We are concerned about a lack of clarity in S. 2132 in allocating liability for tribes that choose to utilize a TERA. According to its terms, the bill would amend 25 U.S.C. § 3504(e)(6) to state that nothing in the bill would change the liability of the Department for terms of any lease, business agreement, or right-of-way that is not a "negotiated term" or losses that are not the result of a "negotiated term." However, the definition of "negotiated term" does not clearly articulate how liability is allocated and the current language regarding the remaining trust responsibility does not provide sufficient clarity.

The Department believes that there is an easy fix to this problem. The Department recommends that the Committee replace the current and proposed amendment with the recently enacted liability provision in the HEARTH Act. This approach will clarify for both the Department and tribes the allocation of liability.

*B. Determining "capacity"*

S. 2132 seeks to amend the statute's capacity requirement by providing that a tribe satisfies the capacity requirement if it has carried out a self-determination con-

tract or compact "relating to the management of tribal land." We recommend that this approach be refined to ensure that the function performed pursuant to the self-determination contract or compact is appropriate given the broad array of functions that TERAs may implement.

The 2005 Act provides a framework under which tribal capacity includes not only managerial and technical capacity for developing energy resources (which necessarily includes realty, environmental, and oversight capabilities), but also managerial and technical capacity to account for energy production, experience in managing natural resources, and financial and administrative resources available for use by the tribe in implementing a TERA. Given the scope of functions that could be included in a TERA, successful administration of a self-governance contract or compact relating to the management of tribal lands may or may not be relevant to performing a particular TERA function.

For example, a self-governance contract for realty functions on a reservation largely devoted to grazing and residential use may not be indicative of regulating the development of oil and gas extraction. We recommend an approach that relies on experience with specific duties and compliance activities to demonstrate capacity for specific functions the tribe wishes to undertake with a TERA. Certainly prior participation in 638 contracts/compacts for specific duties and compliance activities is an important factor, but depending on the specific functions to be undertaken by a tribe in a TERA, it may not be the only factor that should be considered.

Additionally, the Department recommends, as an alternative, the Committee consider streamlining or eliminating capacity determinations. Under existing law the Secretary is required to determine "that the Indian Tribe has demonstrated that the Indian Tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe." To date, no tribe has applied for a TERA, so we have no data on how much effort a tribe must expend for a positive capacity determination for the realty, environmental, and oversight activities it may assume.

However, enactment of the HEARTH Act eliminates this determination for entire categories of energy production. Because the HEARTH Act applies to surface leasing, it is now much simpler for tribes to pursue wind, solar and biomass energy projects without Secretarial approval. The HEARTH Act's promotion of self-governance for surface leasing should be carried forward to mineral development. At a minimum, the Indian Energy Development and Self-Determination Act should be modified to limit TERAs to oil, gas, coal, geothermal, and other mineral-based energy projects, i.e., those that would require a lease under the Indian Mineral Leasing Act of 1938, a Minerals Agreement under the Indian Mineral Development Act of 1982, or a

right-of-way under the Indian All Rights-of-Way Act of 1948.

If Congress maintains the capacity requirement because minerals are a limited and valuable resource, a TERA capacity determination could be based on whether the tribe contracts BIA realty functions in accordance with Pub.L. 93–638. Utilizing this approach would be a well-understood procedure for tribes, it would be useful to a tribe regardless of whether a TERA were ever obtained, and it is an important component to developing energy resources or entering into associated energy leases and rights-of-way.

As currently drafted, S. 2132 uses a similar standard (though not necessarily the contracting of BIA realty functions) as a "safe harbor" standard that would result in an automatic finding of tribal capacity. Successfully operating a 638 contract "relating to the management of tribal lands" for 3 years may not be, in and of itself, sufficient to demonstrate that the tribe involved is prepared to review, approve and manage leases, business agreements and rights-of-way for energy development. However, operating BIA's realty functions on tribal lands represents a component common to all energy development activities a tribe may want to undertake with a TERA. Amending the Indian Energy Development and Self-Determination Act to make this an explicit component of a favorable capacity determination would be clarify the requirement for applicant tribes and streamline the Department's review.

Tribal authority for approving tribal leases for residential and business purposes granted under the HEARTH Act may also serve as a clear capacity criterion for a Tribal Energy Resource Agreement under the Tribal Energy Development and Self-Determination Act of 2005. Such tribal authority is based on the tribe's submittal of, and the Secretary's approval of, tribal leasing regulations consistent with Departmental leasing regulations that also include environmental provisions for identification and evaluation of significant effects leasing may have on the environment and public notice and comment on the effects. While HEARTH Act authority for leasing does not require any capacity determination by the Secretary, tribes that have approved leasing regulations and have issued leases under that authority may be assumed to have both the structure (regulations) and the ability (personnel qualified to carry out the leasing functions) for basic leasing functions.

In addition, the tribal environmental regulations required under the HEARTH Act may form the basis for the environmental review process also required for a TERA under the ITEDSD Act. Other considerations for capacity for environmental review and compliance could include environmental personnel, experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe. An amendment specifying tribal adoption of an environmental code that includes requirements

under a TERA would provide clarity for a capacity determination.

We also believe that the proposed 120 day limit for the Department to determine capacity may not be adequate to comply with the notice requirement required by law. Currently, the Secretary must publish in the Federal Register a notice that a tribe has applied for a TERA with a copy of the TERA and request public comments. The process of seeking and considering public comments and to make appropriate changes in the TERA based on the public comments likely cannot be accomplished within 120 days unless the issue of capacity is excluded from the notice and comment requirement. As a result, we would request that the 120 period run only after the comment period has closed and, if additional changes are then necessary, only after a final TERA has been submitted.

*C. The structure of the petition process*

The Department suggests that the Committee utilize a review process similar to that set forth in the HEARTH Act rather than construct a new review process that could lead to confusion and inconsistent administration. Aligning the statutory authorization for both processes would allow the Department to coordinate the corresponding regulations, thereby making the process more transparent and consistent for tribes and the public. The Department is comfortable with the different standing requirements for third party petitions concerning TERAs versus such petitions under the HEARTH Act.

*D. Approval authority for TEDO's and Tribes without a TERA*

We have strong concerns about the proposed deletion of the TERA requirement for a lease, business agreement, or right-of-way entered into between a tribe and a tribal energy development organization (TEDO). This would be the first time that Congress has allowed for leases to be exempt from Secretarial approval based solely on the identity of the lessee, and not on any determination, either through a capacity determination under a TERA or through approval of regulations, that the tribe has a leasing program that can perform this responsibility.

*E. Other Concerns*

While the Department has other minor concerns which it would be willing to discuss with Committee Staff, the concerns discussed above are the primary concerns.

ALTERNATIVE IDEAS

The following represent concepts the Department believes may work as alternatives to those in the current bill. We would be happy to help develop these concepts in the context of S. 2132 or a new bill, if requested.

*1. Allow the tribes to recover costs from energy developers, e.g., environmental review costs, in the same manner that the Bureau of Land Management can*

The nature of this authority, and any limitations on it, would most likely require tribal consultation.

The BLM has the authority to enter into cost recovery agreements so that the labor costs of processing energy applications are funded by the applicants and not the Department. The BLM's cost recovery authority allows funds from developers to supplement existing appropriations. The BIA has a form of cost recovery authority in theory. However, any funds collected by the BIA must offset appropriated funding, so the authority provides no real benefit to tribes or the BIA in practice. One immediate concern tribes might have could be avoided, however, if this authority specifies that other annual funding for participating tribes, such as Tribal Priority Allocations, cannot be reduced as a consequence of proceeds from cost recovery.

BLM has used its cost-recovery funds to establish Renewable Energy Coordinating Offices (RECOs). The RECO teams include a dedicated Project Manager, a Planning and Environmental Coordinator and two Realty Specialists who process only renewable energy projects within their designated area. The Bureau of Indian Affairs could benefit from having its own independent cost recovery authority to gain revenues to pursue similar initiatives. Staffing issues continue to be an issue in the Department's processing of conventional energy development in Indian Country as well.

*2. Specify that a tribe's initial TERA may be limited in scope, and thus complexity, with subsequent amendments to that TERA focusing only on new and additional responsibilities the tribe wishes to undertake*

As currently provided by law, TERA authority is defined by the resource(s) a tribe wants to develop (*e.g.,* oil and gas, solar) and/or the function the tribe wants to undertake (*e.g.,* entering into leases and business agreements, granting rights-of-way). We understand that the current law does not clearly provide a process for a tribe over time to add to its TERA functions without starting over and pursuing an entirely new TERA. It therefore would be helpful to clarify that a tribe that wants to perform only a limited function initially can phase in new, related functions over time as the tribe's capacity increases, by amending its initial, approved TERA and not by having to duplicate any of the still relevant elements of its initial TERA application. Thus, a tribe that wants to develop oil and gas resources will not feel obliged to demonstrate it has the capacity to handle all conceivable aspects of oil and gas development, from exploration to production to refinement, just to issue oil and gas leases. This is consistent with the way that the Department and the Navajo Nation have implemented the Navajo Nation Trust Land Leasing Act of 2000 [25 U.S.C. § 415(e)] and the way that the Department currently interprets the HEARTH Act of 2012.

CONCLUSION

Thank you for the opportunity to present the Department's views on S. 2132. I will be happy to answer any questions you may have.

---

WRITTEN STATEMENT OF TRACEY A. LEBEAU, DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, DEPARTMENT OF ENERGY

Chairman Tester, Ranking Member Barrasso, and Members of the Committee, thank you for the opportunity to testify on behalf of the U.S. Department of Energy (DOE) on S. 2132, Indian Tribal Energy Development and Self-Determination Act Amendments of 2014. As Director of the Office of Indian Energy Policy and Programs (Office), I am responsible for promoting Indian self-determination and to provide, direct, foster, coordinate, and implement energy planning, education management, conservation, and delivery programs of the Department that promote Indian tribal energy development, efficiency and use and enhance energy infrastructure. In doing so, my Office has a unique perspective on energy development challenges and opportunities in Indian Country.

While the Department is still reviewing S. 2132 and does not have an official position on the bill at this time, I will provide an update to the various energy development and management programs under our purview where we believe we are making inroads in addition to identifying the continuing challenges facing tribal communities in energy and energy security.

The Department of Energy takes seriously its responsibilities and commitments to Sovereign Tribal Nations. We are committed to strengthening federal-tribal relationships to protect tribal rights and interests to promote tribal sovereignty and self-sufficiency. And the Department is also focused on doing what we can to reduce the serious threat of climate change and, with a heightened focus on resilience, doing what we can to prepare American communities, including tribal communities, for the impacts of a changing climate that are already being felt.

DOE OFFICE OF INDIAN ENERGY: BACKGROUND AND EXECUTIVE SUMMARY OF ACCOMPLISHMENTS

The U.S. Department of Energy Office of Indian Energy was directed by Congress in Title V of the Energy Policy Act of 2005 ("Act"), and in previous legislation enacted in 1992, to direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs that assist Tribes with energy development, capacity building, energy infrastructure, energy costs, and electrification of Indian lands and homes. This Office has specific statutory goals:

- Promote Indian tribal energy development, efficiency, and use;
- Reduce or stabilize energy costs;
- Enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and
- Bring electrical power and service to Indian land and the homes of tribal members.

To accomplish these goals, the Act conferred on the Office the authority to provide grants to assist eligible tribal entities in meeting

energy education, research and development, planning, and management needs, which could include: Energy generation, energy efficiency, and energy conservation programs; Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities; Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities; Development, construction, and interconnection of electric power transmission facilities; Developing a program to support and implement research projects that provide opportunities to participate in carbon sequestration practices; and Encouraging cooperative arrangements between Indian Tribes and utilities that provide service to Tribes.

Since joining DOE three years ago, I have been fully committed to implementing the statutory goals for energy development in Indian Country which has included a commitment to continually collaborate with Indian Country. The results of that collaboration are opportunities to identify and address tribal priorities for energy development policies and programs and to fill gaps in current Department programs. More details about these efforts, as well as future plans, are provided below.

PURSUING SUSTAINABLE ENERGY DEVELOPMENT IN INDIAN COUNTRY

Our Office facilitates energy development in Indian Country—including renewable energy sources such as wind and solar, energy efficiency improvements, and fossil-fuel electric generation that uses carbon sequestration systems, as well as improving the infrastructure needed to deliver this energy. Tribes have shown a high motivation to pursue expanded clean energy development. It is our experience thus far that the DOE Office of Indian Energy Policy and Programs' initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of tribal energy development. Our priority is focused on providing useful information and tools as well as designing and implementing innovative programs to accelerate clean energy and energy infrastructure development in Indian Country.

Our office tasked the DOE National Renewable Energy Laboratory (NREL) to update all the renewable resource estimates in Indian Country. Based on updated data provided by using updated analysis and modeling tools, the estimated maximum renewable energy resource potential on Indian lands is millions of megawatts (MW) of nameplate capacity. These comprehensive updated estimates can be found at *http://www.nrel.gov/docs/fy13osti/57748.pdf*. It is clear that further development of these energy resources in Indian Country can provide an opportunity to not only increase tribal energy reliability and self-sufficiency but also contribute to the President's energy security goals and Climate Action Plan. President Obama and Secretary Moniz have been extremely supportive of improving the economy of Tribal communities through enhanced clean energy development. At the 2013 White House Tribal Nations Conference, the President stated:

> The health of tribal nations depends on the health of tribal lands. So it falls on all of us to protect the extraordinary beauty of those lands for future generations. And

> already, many of your lands have felt the impacts of a changing climate, including more extreme flooding and droughts. That's why, as part of the Climate Action Plan I announced this year, my administration is partnering with you to identify where your lands are vulnerable to climate change, how we can make them more resilient.

Indian Tribes and Alaskan Native villages have made clear to us that resilient energy and energy infrastructure can, as a priority, go hand in hand with the vision of a cleaner energy future. Providing Indian Country with committed, collaborative technical assistance is a keystone of the programs and policies of the Office. Our guiding star is to work with Tribes as they implement their own strategic, long-term solutions—solutions with the potential to reduce energy costs, enhance energy security, promote tribal sovereignty and guide Native communities towards a sustainable energy future To support this tribally articulated vision, we support a number of programs that provide energy policy information as well as practical, market-based tools to Tribes that are taking tribal projects past feasibility discussions and into investment and deployment decision-making.

The Indian Country Energy and Infrastructure Working Group was established in August 2011 to ensure these and future technical and financial assistance programs are responsive to Tribes. The working group provides critical advice and recommendations to the Secretary and to the Director of the DOE Office of Indian Energy Policy and Programs on the strategic planning and implementation of the Department's energy resource, energy technology, and energy infrastructure development programs.

PROMOTING STRONG PARTNERSHIPS AND ADDRESSING COMMON CHALLENGES

We also have taken time to survey, evaluate, coordinate and better leverage a variety of DOE energy programs, for example, the Office of Electricity Delivery and Energy Reliability, Western Area Power and Bonneville Power Administrations, and also including the grants offered through the Office of Energy Efficiency and Renewable Energy. Below are important lessons learned we would like to highlight:

Prior to 2011, efforts both by DOE and in Indian Country largely focused on commercial—scale projects, which are typically developed to export from Tribal areas into the broader energy marketplace. This focus is understandable, given the revenue potential of these large scale projects. In our view, however, the capacity-building and community energy issues highlighted in the Energy Policy Act of 2005 provisions which guide our Office's mission and goals, there was a considerable opportunity and continuing need in community-scale and facility-scale energy generation, as well as energy efficiency. Community-scale and facility-scale projects are developed to provide electricity to the local community (housing) or onsite (government buildings, community buildings), usually in order to address fiscal challenges of high energy costs in Native communities. These types of projects allow tribes to marshal their resources to cleanly generate their own energy and electricity; reduce and/or stabilize their energy costs; create jobs in the construction,

operation, and maintenance of these systems; promote energy reliability and self-sufficiency; and promote reservation economic development.

Key obstacles which my Office continues to monitor with respect to commercial-scale energy development in Indian Country include:

- Cost to build projects and the financing and funding options available for projects, particularly renewable projects that use financial incentives not well suited to tribal governments or their enterprises;
- Frequent congestion on the transmission grid or difficulty working through interconnection and transmission service agreements with public electric entities whom are not FERC jurisdictional and/or open access compliant;
- Being located in markets that do not support, require or incentivize renewable energy portfolio standards or purchases or markets that are dominated by utilities whom are exempted from any renewable incentive programs; and
- Securing whole buyers who are willing to purchase renewable energy at the cost to produce the energy and whom are unfamiliar with the legalities of financing or contracting with tribal businesses.

Other recent or real-time observations in working closely with Tribes and Alaska Native communities on a variety of projects and issues include:

Much of the high visibility, celebrated commercial-scale energy development in Indian Country has been almost exclusively in the purview of third-party developers who lease land from Tribes to build renewable energy projects in Indian Country. There are three primary reasons for this: magnitude of upfront capital cost; tax and other financial incentives which promote third party development and ownership by taxable entities; and the extensive expertise required to build commercial-scale projects.

Tribes have become more interested in community-scale, facility-scale development for a number of reasons, including the success of the Energy Efficiency Community Block Grant program, state and utility companies' incentives that pay for on-site generation, newly emerging relative ease of tribal leasing and permitting for renewable projects under the HEARTH Act, and reducing or stabilizing costs.

The level of energy education and expertise remains a challenge for Tribes undertaking often complex energy projects, but we are making headway. And the lack of energy business acumen is not necessarily based on business capacity. The complexity of issues such as renewable energy tax structuring and technology risk and operational issues is difficult to navigate for even the most business-oriented Tribes, given the unique nature of these issues. This is particularly the case where Tribes wish to finance, own and operate their own systems without third party ownership or participation to address tax and related financial incentives. We have provided that training to Tribes which has led to affirmative decision making.

In many respects, there are several issues shared between Alaska Native villages and smaller tribes in the contiguous states, including: remote locations (cannot access transmission grids), small land bases (insufficient for commercial-scale and even sometimes

community-scale development), small populations (they lack the human resource capacity for comprehensive energy development), and scarce financial resources. Hence, we have refocused our efforts on the unique energy situation for Alaska Native villages.

Lastly, given this information, our primary short term goal has been to develop several programs to respond to the issues, obstacles, and opportunities in Indian Country so that we can see more implementation of successful, cost-effective projects.

DOE OFFICE OF INDIAN ENERGY PROGRAMS AND PRIORITIES

My Office has recently launched several programs and initiatives to promote energy development in Indian Country and address the challenges identified above:

*DOE Indian Energy START Program*

The Strategic Technical Assistance Response Team (START) initiative is a signature and unique DOE Office of Indian Energy program aimed at advancing next-generation energy development in Indian Country. The START program is focused on the 48 contiguous states and Alaska. *http://energy.gov/indianenergy/resources/start-program*

For the 48 contiguous states, early-stage project development technical assistance will be provided through the START program to selected projects. The goals of the START programs are to bring targeted, strategic technical assistance to Tribes and Alaska Native governments whom have already committed resources and efforts to developing clean energy in their communities. This program is the next step in the development process as the Department has invested in early-stage feasibility in many Indian communities and this next-level development work is providing tribal communities with unbiased, expert technical assistance and information which is helping tribal decision makers to take the next step towards investments and deployment.

After being competitively selected, DOE and NREL experts work directly with tribal community-based teams as well as tribal legal and finance specialists to further develop market feasibility assessments; due diligence research, analysis, and documentation; and early predevelopment work to prepare site control, verify resource, prequalify off-take agreements and strategy, and produce a permitting plan.

Our investments in the START Program are starting to already see returns. Several START projects have resulted in decision-making, tribal investment commitments, construction starts and deployment of clean technology solutions. *http://energy.gov/indianenergy/downloads/office-indian-energy-newsletter-springsummer-2014.* In Alaska, we initially teamed up with the Denali Commission to specifically assist in the development of tribal energy planning for Alaska Native entities. Our Alaska START Program continues to actively seek programmatic and financial federal and state partners to ensure comprehensive collaboration and success for Alaska Native communities in need of stabilized energy costs. Alaska START Program Summary at *http://www.nrel.gov/docs/fy13osti/58879.pdf.*

*Energy Capacity Building & Tribal Energy Training*

In three years, we have established a robust tribal technical assistance and training program which features in-person, in-depth training to tribal leaders and staff as well as web-based, on-demand training for those whom prefer to participate at their own pace and in their own offices.

Since launched in October 2012, our renewable energy web-based curriculum has had over 1,490 visitors and our resource library which hosts dozens of tribally-relevant documents and tools has had over 1,250 visitors. Since July 2013, we have hosted 49 tribal members for in-person renewable product development and finance forums. We have held numerous best practice and peer-to-peer forums—ranging from such topics as solar energy development to transmission and clean energy integration. Since December 2011, approximately 350 tribal leaders and staff have attended these in-person best practices forums.

*Energy Transmission Training and Technical Assistance*

Understanding the transmission grid, interconnection issues, and issues related to distribution of clean energy also are critical for successful development of energy projects, whether commercial or community scale. We are working with our partners in DOE's Office of Electricity Delivery and Energy Reliability, the Western Area Power Administration, and the Office of Energy Efficiency and Renewable Energy to offer a webinar series to address the range of issues associated to developing clean energy and transmission. Since January 2013, we have had over 2,050 participants in our webinar series. We have as a team also provided almost a dozen Tribes with prefeasibility transmission study assistance and a range of other training and technical assistance.

*Office of Indian Energy's Enhanced Coordination with the Office of Energy Efficiency and Renewable Energy's (EERE) Tribal Energy Program*

EERE's Tribal Energy Program was originally established under the Energy Policy Act of 1992 to implement DOE's responsibilities under the Act. Since 2005, the program has been implementing the Office of Indian Energy's EPAct Title V grant authority and has been providing funding related to renewable energy and energy efficiency. Since becoming fully operational, the Office of Indian Energy and EERE's tribal program have jointly offered coordinated energy programs to ensure against duplication, have leveraged grants into START projects to accelerate project successes, and have offered free technical assistance to Tribes (up to 40 hours) which has focused much of its efforts on energy strategic planning and hands-on prioritized technical analysis for clean energy projects.

*Other DOE Office and Interagency Coordination*

As stated earlier, one of our primary goals is to leverage existing DOE resources to promote and implement energy development in Indian Country. As one recent example, the Department high-lighted tribal eligibility and inclusion in our $15 million Solar Market Pathways funding opportunity announcement. This funding opportunity seeks to help state, tribal and local communities develop

replicable multi-year strategies that spur significant solar deployment, drive down solar soft costs, and support local economic development efforts. Our experience is the Office's vantage point enhances DOE-wide coordination which facilitates more opportunities to leverage the considerable technical assistance mechanisms developed by our programs for government and community leaders. These programs also have created educational materials by working with and learning from government leaders on implementing renewable energy policies and programs at the community level. It is our goal to leverage those lessons and best practices in Indian Country, so that we do not have to recreate the wheel and can apply proven techniques and technical assistance.

We also intend to build on the many relationships and coordination efforts we have initiated with other federal agencies that provide support for energy development. Those agencies include the Department of the Interior (DOI), Department of Agriculture, Denali Commission in Alaska, Environmental Protection Agency, and the Department of Commerce. For example, in Alaska, we have been actively engaged in energy development and management activities over the last two years and as part of the National Strategy for the Arctic Region, and will take the lead on the implementation plan for promoting more renewable energy development in the Alaska Native villages in the Arctic Region. This plan includes continuing the Office of Indian Energy's Alaska START program, comprehensive strategic technical assistance to assist Alaska Native villages with community-wide energy issues and project opportunities. The Office of Indian Energy will also convene a renewable energy development forum in the summer of 2014 to bring together key stakeholders in renewable energy development and focused on building public-private partnerships as the means for structuring and financing renewable energy projects remote Alaska Native villages. Also, in support of its Alaska efforts, the Office of Indian Energy has stationed a full-time program manager in Anchorage.

*Setting Priorities in Fiscal Year 2015 Budget and Future Efforts*

The President's FY 2015 budget request, which includes $16 million for Indian Energy Policy and Programs as a separate appropriation, reflects the consolidation of our tribal energy programs and Office of Indian Energy into a single office. This increased and consolidated budget request will enable DOE to maintain key initiatives while leveraging authorized tools and build on initiatives developed and executed since 2011. For example, we will continue: to support the Indian Country Energy and Infrastructure Working Group; the START Program; to expand our energy capacity building efforts; and to provide additional technical assistance to Tribes in support of tribal energy development projects.

CONCLUSION

Thank you for the opportunity to share the exciting things we are doing in collaboration and in partnership with Indian Country to promote energy development on Indian lands.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2132, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

25 U.S.C. § 3501 (Energy Policy Act of 1992)

**§ 3501. Definitions**

In this chapter:

* * * * * * *

[(11) The term "tribal energy resource development organization" means an organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 3502 of this title.]

*(11) The term 'tribal energy development organization' means—*

*(A) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (25 U.S.C. 503) (commonly known as the 'Oklahoma Indian Welfare Act')); or*

*(B) any organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 2602 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of section 2604.*

25 U.S.C. § 3502 (Energy Policy Act of 1992)

**§ 3502. Indian tribal energy resource development**

(a) DEPARTMENT OF THE INTERIOR PROGRAM.——

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and [*tribal energy resource development organizations*] tribal energy development organizations in achieving the purposes of this chapter.

(2) In carrying out the Program, the Secretary shall——

(A) provide development grants to Indian tribes and [*tribal energy resource development organizations*] tribal energy development organizations for use in developing or obtaining the managerial and technical capacity needed to

develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and [*tribal energy resource development organizations*] tribal energy development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land;

(C) provide low-interest loans to Indian tribes and [*tribal energy resource development organizations*] tribal energy development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources; [and]

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this chapter, including—

(i) training programs for tribal environmental officials, program managers, and other governmental representatives;

(ii) the development of model environmental policies and tribal laws, including tribal environmental review codes, and the creation and maintenance of a clearinghouse of best environmental management practices; and

(iii) recommended standards for reviewing the implementation of tribal environmental laws and policies within tribal judicial or other tribal appeals systems[.]*; and*

*(E) consult with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe.*

(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.

*(4) PLANNING.—*

*(A) IN GENERAL.—In carrying out the program established in paragraph (1), the Secretary shall provide technical assistance to interested Indian tribes to develop energy plans, including—*

*(i) plans for electrification;*

*(ii) plans for oil and gas permitting, renewable energy permitting, energy efficiency, electricity generation, transmission planning, water planning, and other planning relating to energy issues;*

*(iii) plans for the development of energy resources and to ensure the protection of natural, historic, and cultural resources; and*

*(iv) any other plans that would assist an Indian tribe in the development or use of energy resources.*

*(B) COOPERATION.—In establishing the program under paragraph (1), the Secretary shall work in cooperation with*

*the Office of Indian Energy Policy and Programs of the Department of Energy.*

(b) DEPARTMENT OF ENERGY INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE PROGRAM.—

(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe, *intertribal organization,* or **[**tribal energy resource development organization**]** *tribal energy development organization* for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;

*(C) activities to increase the capacity of Indian tribes to manage energy development and energy efficiency programs*;

**[**(C)**]***(D)* planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

**[**(D)**]***(E)* development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

*(3) TECHNICAL AND SCIENTIFIC RESOURCES.—In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects.*

**[**(3)**]***(4)*(A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including—

(i) geologic sequestration;

(ii) forest sequestration;

(iii) agricultural sequestration; and

(iv) any other sequestration opportunities the Director considers to be appropriate.

(B) The activities carried out under subparagraph (A) shall be—

(i) coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;

(ii) conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse gases sequestered in projects that may be implemented on Indian land; and

(iii) reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.

**[**(4)**]***(5)*(A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to any application received from an Indian tribe with inadequate electric service (as determined by the Director).

(C) In providing a grant under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Director shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Director determines to be appropriate.

**[**(5)**]***(6)* The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

**[**(6)**]***(7)* There is authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2006 through 2016.

(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 661a Title 2) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe *or a tribal energy development organization* for energy development.

(2) In providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Secretary of Energy shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Secretary determines to be appropriate.

(3) A loan **[**guarantee**]** *guaranteed* under this subsection shall be made by—

(A) a financial institution subject to examination by the Secretary of Energy; **[**or**]**

(B) an Indian tribe, from funds of the Indian tribe**[**.**]***; or*

*(C) a tribal energy development organization, from funds of the tribal energy development organization.*

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

(5) **[**The Secretary of Energy may**]** *Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014, the Secretary of Energy shall* issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

25 U.S.C. § 3503 (Energy Policy Act of 1992)

**§ 3503. Indian tribal energy resource regulation**

* * * * * * *

(c) OTHER ASSISTANCE.—

(1) In carrying out the obligations of the United States under this chapter, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that [on the request of an Indian tribe, the Indian tribe] *on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization* shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

(2) The Secretary may carry out paragraph (1)—

(A) directly, through the use of Federal officials; or

(B) indirectly, by providing financial assistance to an Indian tribe *or tribal energy development organization* to secure independent assistance.

25 U.S.C. § 3504 (Energy Policy Act of 1992)

**§ 3504. Leases, business agreements, and rights-of-way involving energy development or transmission**

(a) LEASES AND BUSINESS AGREEMENTS.—In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land; [or]

(B) construction or operation of—

[(i) an electric generation, transmission, or distribution facility located on tribal land; or]

*(i) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land; or*

(ii) a facility to process or refine energy resources, *at least a portion of which have been* developed on *or produced from* tribal land; [and] *or*

*(C) pooling, unitization, or communitization of the energy mineral resources of the Indian tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian tribe or an individual Indian in fee, trust, or restricted status or by any other persons or entities) if the owner of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement; and*

[(2) a lease or business agreement described in paragraph (1) shall not require review by or the approval of the Secretary under section 81 of this title, or any other provision of law, if—

(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

(B) the term of the lease or business agreement does not exceed—

(i) 30 years; or

(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subsection (e)(2)(D)(i)).]

*(2) a lease or business agreement described in paragraph (1) shall not require review by, or the approval of, the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), or any other provision of law, if the lease or business agreement—*

*(A) was executed—*

*(i) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or*

*(ii) by the Indian tribe and a tribal energy development organization—*

*(I) for which the Indian tribe has obtained certification pursuant to subsection (h); and*

*(II) the majority of the interest in which is, and continues to be throughout the full term or renewal term (if any) of the lease or business agreement, owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed); and*

*(B) has a term that does not exceed—*

*(i) 30 years; or*

*(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities.*

[(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary if—

(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

(2) the term of the right-of-way does not exceed 30 years;

(3) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission, or distribution facility located on tribal land; or

(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under an agreement described in subparagraphs (D) and (E) of subsection (e)(2)).]

*(b) RIGHTS-OF-WAY.—An Indian tribe may grant a right-of-way over tribal land without review or approval by the Secretary if the right-of-way—*

*(1) serves—*

*(A) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;*

*(B) a facility located on tribal land that extracts, produces, processes, or refines energy resources; or*

*(C) the purposes, or facilitates in carrying out the purposes, of any lease or agreement entered into for energy resource development on tribal land; and*

*(2) was executed—*

*(A) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or*

*(B) by the Indian tribe and a tribal energy development organization—*

*(i) for which the Indian tribe has obtained certification pursuant to subsection (h); and*

*(ii) the majority of the interest in which is, and continues to be throughout the full term or renewal term (if any) of the right-of-way, owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed); and*

*(3) has a term that does not exceed 30 years.*

(c) RENEWALS.—A lease or business agreement entered into, or a right-of-way granted, by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

[(d) VALIDITY.—No lease, business agreement, or right-of-way relating to the development of tribal energy resources under this section shall be valid unless the lease, business agreement, or right-of-way is authorized by a tribal energy resource agreement approved by the Secretary under subsection (e)(2).]

*(d) VALIDITY.—No lease or business agreement entered into, or right-of-way granted, pursuant to this section shall be valid unless*

*the lease, business agreement, or right-of-way is authorized by subsection (a) or (b).*

(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

[(1) On the date on which regulations are promulgated under paragraph (8), an Indian tribe may submit to the Secretary a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.]

*(1) IN GENERAL.—On or after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014, an Indian tribe may submit to the Secretary a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.*

[(2)(A) Not later than 270 days after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(C) (or a later date, as agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.]

*(2) PROCEDURE.—*

*(A) EFFECTIVE DATE.—*

*(i) IN GENERAL.—On the date that is 271 days after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), the tribal energy resource agreement shall take effect, unless the Secretary disapproves the tribal energy resource agreement under subparagraph (B).*

*(ii) REVISED TRIBAL ENERGY RESOURCE AGREEMENT.—On the date that is 91 days after the date on which the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(B), the revised tribal energy resource agreement shall take effect, unless the Secretary disapproves the revised tribal energy resource agreement under subparagraph (B).*

[(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—]

*(B) DISAPPROVAL.—The Secretary shall disapprove a tribal energy resource agreement submitted pursuant to paragraph (1) or (4)(B) only if—*

[(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;]

*(i) the Secretary determines that the Indian tribe has not demonstrated that the Indian tribe has sufficient capacity to regulate the development of the specific 1 or more energy resources identified for development under the tribal energy resource agreement submitted by the Indian tribe;*

*(ii) a provision of the tribal energy resource agreement would violate applicable Federal law (including regulations) or a treaty applicable to the Indian tribe;*

*(iii) the tribal energy resource agreement does not include 1 or more provisions required under subparagraph (D); or*

[(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and]

[(iii)]*(iv)* the tribal energy resource agreement [includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—] *does not include provisions that, with respect to any lease, business agreement, or right-of-way to which the tribal energy resource agreement applies—*

(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

(III) address amendments and renewals;

(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

(V) address technical or other relevant requirements;

(VI) establish requirements for environmental review in accordance with subparagraph (C);

(VII) ensure compliance with all applicable environmental laws, including a requirement that each lease, business agreement, and right-of-way state that the lessee, operator, or right-of-way grantee shall comply with all such laws;

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

(X) establish a process for consultation with any affected States regarding off-reservation impacts, if any, identified under subparagraph (C)(i);

(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

(XII) require each lease, business agreement, and right-of-way to include a statement that, if any of its provisions violates an express term or requirement of the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed—

(aa) the provision shall be null and void; and

(bb) if the Secretary determines the provision to be material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the exe-

cuted lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations promulgated under paragraph (8);

(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary under paragraph (7)(B); *and*

**[**(XV) specify the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in implementation of the tribal energy resource agreement, including environmental review of individual projects; and**]**

**[**(XVI)**]***(XV)* in accordance with the regulations promulgated by the Secretary under paragraph (8), require that the Indian tribe, as soon as practicable after receipt of a notice by the Indian tribe, give written notice to the Secretary of—

(aa) any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way entered into under the tribal energy resource agreement; and

(bb) any activity or occurrence under a lease, business agreement, or right-of-way that constitutes a violation of Federal **[**or tribal**]** environmental laws.

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to *the approval of* a lease, business agreement, or right-of-way under this section, provides for, at a minimum—

(i) the identification and evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources;

**[**(ii) the identification of proposed mitigation measures, if any, and incorporation of appropriate mitigation measures into the lease, business agreement, or right-of-way;**]**

*(ii) the identification of mitigation measures, if any, that, in the discretion of the Indian tribe, the Indian tribe might propose for incorporation into the lease, business agreement, or right-of-way;*

(iii) a process for ensuring that—

(I) the public is informed of, and has an opportunity to comment on, the environmental impacts of the **[**proposed action**]** *approval of the lease, business agreement, or right-of-way;* and

(II) responses to relevant and substantive comments are provided, before tribal approval of the lease, business agreement, or right-of-way;

(iv) sufficient administrative support and technical capability to carry out the environmental review process; **[**and**]**

(v) oversight by the Indian tribe of energy development activities by any other party under any lease, business agreement, or right-of-way entered into pursuant to the tribal energy resource agreement, to determine whether the activities are in compliance with the tribal energy resource agreement and applicable Federal environmental laws[.]*; and*

*(vi) the identification of specific classes or categories of actions, if any, determined by the Indian tribe not to have significant environmental effects.*

(D) A tribal energy resource agreement between the Secretary and an Indian tribe under this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources under the tribal energy resource agreement; and

(ii) if a periodic review and evaluation, or an investigation, by the Secretary of any breach or violation described in a notice provided by the Indian tribe to the Secretary in accordance with [subparagraph (B)(iii)(XVI)] *subparagraph (B)(iv)(XV),* results in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take actions determined by the Secretary to be necessary to protect the asset, including reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and any condition that caused the jeopardy are corrected.

(E) Periodic review and evaluation under subparagraph (D) shall be conducted on an annual basis, except that, after the third annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation under subparagraph (D) to be conducted once every 2 years.

*(F) A tribal energy resource agreement that takes effect pursuant to this subsection shall remain in effect to the extent any provision of the tribal energy resource agreement is consistent with applicable Federal law (including regulations), unless the tribal energy resource agreement is—*

*(i) rescinded by the Secretary pursuant to paragraph (7)(D)(iii)(II); or*

*(ii) voluntarily rescinded by the Indian tribe pursuant to the regulations promulgated under paragraph (8)(B) (or successor regulations).*

*(G)(i) The Secretary shall make a preliminary capacity determination under subparagraph (B)(i) not later than 120 days after the date on which the Indian tribe submits to the Secretary the tribal energy resource agreement of the Indian tribe pursuant to paragraph (1), unless the Sec-*

*retary and the Indian tribe mutually agree to an extension of the time period for making the determination.*

*(ii) Any determination (including any preliminary determination) that the Indian tribe lacks the requisite capacity shall be treated as a disapproval under paragraph (4) and, not later than 10 days after the date of the determination, the Secretary shall provide to the Indian tribe—*

*(I) a detailed, written explanation of each reason for the determination; and*

*(II) a description of the steps that the Indian tribe should take to demonstrate sufficient capacity.*

*(H) Notwithstanding any other provision of this section, an Indian tribe shall be considered to have demonstrated sufficient capacity under subparagraph (B)(i) to regulate the development of the specific 1 or more energy resources of the Indian tribe identified for development under the tribal energy resource agreement submitted by the Indian tribe pursuant to paragraph (1) if—*

*(i) the Secretary determines that—*

*(I)(aa) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and*

*(bb) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the tribal energy resource agreement of the Indian tribe pursuant to paragraph (1) or (4)(B), the contract or compact—*

*(AA) has been carried out by the Indian tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and*

*(BB) has included programs or activities relating to the management of the environment, tribal land, realty, or natural resources; or*

*(II) the Indian tribe has carried out approval of surface leases under subsection (h) of the first section of the Act of August 9, 1955 (commonly known as the 'Long-Term Leasing Act') (25 U.S.C. 415(h)) for the previous calendar year without a finding of a compliance violation under 25 U.S.C. 415(h)(8)(B); or*

*(ii) the Secretary fails to make the preliminary determination within the time allowed under subparagraph (G)(i) (including any extension of time agreed to under that subparagraph).*

**[**(3) The Secretary**]** *(3) NOTICE AND COMMENT; SECRETARIAL REVIEW.—The Secretary* shall provide notice and opportunity for public comment on tribal energy resource agreements submitted **[**for approval**]** under paragraph (1). The Secretary's review of a tribal energy resource agreement shall be limited to activities specified by the provisions of the tribal energy resource agreement.

**[**(4) If the Secretary**]***(4) ACTION IN CASE OF DISAPPROVAL.—If the Secretary* disapproves a tribal energy resource agreement

submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the [date of disapproval—] *date of disapproval, provide the Indian tribe with—*

[(A) notify the Indian tribe in writing of the basis for the disapproval;

[(B) identify what changes or other actions are required to address the concerns of the Secretary; and

[(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.]

*(A) a detailed, written explanation of—*

*(i) each reason for the disapproval; and*

*(ii) the revisions or changes to the tribal energy resource agreement necessary to address each reason; and*

*(B) an opportunity to revise and resubmit the tribal energy resource agreement.*

[(5) If an Indian tribe]*(5) PROVISION OF DOCUMENTS TO SECRETARY.—If an Indian tribe* executes a lease or business agreement, or grants a right-of-way, in accordance with a tribal energy resource agreement [approved] in *effect* under this subsection, the Indian tribe shall, in accordance with the process and requirements under regulations promulgated under paragraph (8), provide to the Secretary—

(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the Indian tribe under, the lease, business agreement, or right-of-way.

[(6)(A) In carrying out]*(6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION.—*

*(A) In carrying out* this section, the Secretary shall—

(i) act in accordance with the trust responsibility of the United States relating to mineral and other trust resources; and

(ii) act in good faith and in the best interests of the Indian tribes.

[(B) Subject to] *(B) Subject only to* the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements [approved] *in effect* under this section, and the provisions of [subparagraph (D)] *subparagraphs (C) and (D)*, nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe.

(C) The Secretary shall continue to fulfill the trust obligation of the United States *to perform the obligations of the Secretary under this section and* to ensure that the rights and interests of an Indian tribe are protected if—

(i) any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

(ii) any provision in a lease, business agreement, or right-of-way violates the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

(D)(i) In this subparagraph, the term "negotiated term" means any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to ⟦an approved tribal energy resource agreement⟧ *a tribal energy resource agreement in effect under this section.*

(ii) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement ⟦approved by the Secretary⟧ *in effect* under paragraph (2).

*(iii) Nothing in this section absolves, limits, or otherwise affects the liability, if any, of the United States for any—*

*(I) term of any lease, business agreement, or right-of-way under this section that is not a negotiated term; or*

*(II) losses that are not the result of a negotiated term, including losses resulting from the failure of the Secretary to perform an obligation of the Secretary under this section.*

⟦(7)(A) In this paragraph⟧ *(7) PETITIONS BY INTERESTED PARTIES.—*

*(A) In this paragraph,* the term "interested party" means any person (including an entity) that ⟦has demonstrated⟧ *the Secretary determines has demonstrated with substantial evidence* that an interest of the person has sustained, or will sustain, an adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe ⟦approved by the Secretary⟧ *in effect* under paragraph (2).

(B) After exhaustion of ⟦any tribal remedy⟧ *all remedies (if any) provided under the laws of the Indian tribe*, and in accordance with regulations promulgated by the Secretary under paragraph (8), an interested party may submit to the Secretary a petition to review the compliance by an Indian tribe with a tribal energy resource agreement of the Indian tribe ⟦approved by the Secretary⟧ *in effect* under paragraph (2).

(C)(i) Not later than 20 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall—

(I) provide to the Indian tribe a copy of the petition; and

(II) consult with the Indian tribe regarding any noncompliance alleged in the petition.

(ii) Not later than 45 days after the date on which a consultation under clause (i)(II) takes place, the Indian tribe shall respond to any claim made in a petition under subparagraph (B).

(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—

(I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or

(II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).

(D)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall [determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.] *determine—*

*(I) whether the petitioner is an interested party; and*

*(II) if the petitioner is an interested party, whether the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition.*

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the [determination] *determinations* under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource [agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including] *agreement pursuant to clause (i), the Secretary shall only take such action as the Secretary determines necessary to address the claims of noncompliance made in the petition, including—*

(I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is in compliance with the [approved] tribal energy resource agreement; or

(II) rescinding [approval of] all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in [subsection (a) or (b)] *subsection (a)(2)(A)(i) or (b)(2)(A).*

(E) Before taking an action described in subparagraph (D)(iii), the Secretary shall—

(i) make a written determination that describes [the manner in which], *with respect to each claim made in*

*the petition, how* the tribal energy resource agreement has been violated;

(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

(iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

(F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.

*(G) Notwithstanding any other provision of this paragraph, the Secretary shall dismiss any petition from an interested party that has agreed with the Indian tribe to a resolution of the claims presented in the petition of that party.*

(8) Not later than 1 year after August 8, 2005, the Secretary shall promulgate regulations that implement this subsection, including—

(A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

(B) a process and requirements in accordance with which an Indian tribe may—

(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; **[**and**]**

(ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection; *and*

*(iii) amend an approved tribal energy resource agreement to assume authority for approving leases, business agreements, or rights-of-way for development of another energy resource that is not included in an approved tribal energy resource agreement without being required to apply for a new tribal energy resource agreement;*

(C) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

(D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

*(9) EFFECT.—Nothing in this section authorizes the Secretary to deny a tribal energy resource agreement or any amendment to a tribal energy resource agreement, or limit the effect or im-*

*plementation of this section, due to lack of promulgated regulations.*

(f) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of—

(1) any Federal environmental law;

(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(3) except as otherwise provided in this chapter, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

*(g) FINANCIAL ASSISTANCE IN LIEU OF ACTIVITIES BY THE SECRETARY.—*

*(1) IN GENERAL.—Any amounts that the Secretary would otherwise expend to operate or carry out any program, function, service, or activity (or any portion of a program, function, service, or activity) of the Department that, as a result of an Indian tribe carrying out activities under a tribal energy resource agreement, the Secretary does not expend, the Secretary shall, at the request of the Indian tribe, make available to the Indian tribe in accordance with this subsection.*

*(2) ANNUAL FUNDING AGREEMENTS.—The Secretary shall make the amounts described in paragraph (1) available to an Indian tribe through an annual written funding agreement that is negotiated and entered into with the Indian tribe that is separate from the tribal energy resource agreement.*

*(3) EFFECT OF APPROPRIATIONS.—Notwithstanding paragraph (1)—*

*(A) the provision of amounts to an Indian tribe under this subsection is subject to the availability of appropriations; and*

*(B) the Secretary shall not be required to reduce amounts for programs, functions, services, or activities that serve any other Indian tribe to make amounts available to an Indian tribe under this subsection.*

*(4) DETERMINATION.—*

*(A) IN GENERAL.—The Secretary shall calculate the amounts under paragraph (1) in accordance with the regulations adopted under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014.*

*(B) APPLICABILITY.—The effective date or implementation of a tribal energy resource agreement under this section shall not be delayed or otherwise affected by—*

*(i) a delay in the promulgation of regulations under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014;*

*(ii) the period of time needed by the Secretary to make the calculation required under paragraph (1); or*

*(iii) the adoption of a funding agreement under paragraph (2).*

*(h) CERTIFICATION OF TRIBAL ENERGY DEVELOPMENT ORGANIZATION.—*

*(1) IN GENERAL.—Not later than 90 days after the date on which an Indian tribe submits an application for certification of a tribal energy development organization in accordance with regulations promulgated under section 103(b) of the Indian*

*Tribal Energy Development and Self-Determination Act Amendments of 2014, the Secretary shall approve or disapprove the application.*

*(2) REQUIREMENTS.—The Secretary shall approve an application for certification if—*

*(A)(i) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and*

*(ii) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application, the contract or compact—*

*(I) has been carried out by the Indian tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and*

*(II) has included programs or activities relating to the management of tribal land; and*

*(B)(i) the tribal energy development organization is organized under the laws of the Indian tribe and subject to the jurisdiction and authority of the Indian tribe;*

*(ii) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed); and*

*(iii) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed) own and control at all times a majority of the interest in the tribal energy development organization.*

*(3) ACTION BY SECRETARY.—If the Secretary approves an application for certification pursuant to paragraph (2), the Secretary shall, not more than 10 days after making the determination—*

*(A) issue a certification stating that—*

*(i) the tribal energy development organization is organized under the laws of the Indian tribe and subject to the jurisdiction and authority of the Indian tribe;*

*(ii) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed);*

*(iii) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and 1 or more other Indian tribes the tribal land of which is being developed) own and control at all times a majority of the interest in the tribal energy development organization; and*

*(iv) the certification is issued pursuant this subsection;*

*(B) deliver a copy of the certification to the Indian tribe; and*

*(C) publish the certification in the Federal Register.*

*(i) SOVEREIGN IMMUNITY.—Nothing in this section waives the sovereign immunity of an Indian tribe.*

**[**(g)**]***(j)* AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.

25 U.S.C. § 3506 (Energy Policy Act of 1992)

**§ 3506. Wind and hydropower feasibility study**

* * * * * * *

(c) REPORT. Not later than 1 year after August 8, 2005, the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

* * * * * * *

(3) if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal **[**energy resource development**]** *energy development* organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and

The Energy Policy Act of 1992 (25 U.S.C. § 3501 et seq.)

* * * * * * *

***SEC. 2607. APPRAISALS.***

*(a) IN GENERAL.—For any transaction that requires approval of the Secretary and involves mineral or energy resources held in trust by the United States for the benefit of an Indian tribe or by an Indian tribe subject to Federal restrictions against alienation, any appraisal relating to fair market value of those resources required to be prepared under applicable law may be prepared by—*

*(1) the Secretary;*

*(2) the affected Indian tribe; or*

*(3) a certified, third-party appraiser pursuant to a contract with the Indian tribe.*

*(b) SECRETARIAL REVIEW AND APPROVAL.—Not later than 45 days after the date on which the Secretary receives an appraisal prepared by or for an Indian tribe under paragraph (2) or (3) of subsection (a), the Secretary shall—*

*(1) review the appraisal; and*

*(2) approve the appraisal unless the Secretary determines that the appraisal fails to meet the standards set forth in regulations promulgated under subsection (d).*

*(c) NOTICE OF DISAPPROVAL.—If the Secretary determines that an appraisal submitted for approval under subsection (b) should be disapproved, the Secretary shall give written notice of the disapproval to the Indian tribe and a description of—*

*(1) each reason for the disapproval; and*

*(2) how the appraisal should be corrected or otherwise cured to meet the applicable standards set forth in the regulations promulgated under subsection (d).*

*(d) REGULATIONS.—The Secretary shall promulgate regulations to carry out this section, including standards the Secretary shall use for approving or disapproving the appraisal described in subsection (a).*

16 U.S.C. § 800 (Federal Power Act)

**§ 800. Issuance of preliminary permits or licenses**

(a) PREFERENCE.—In issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued, the Commission shall give preference to applications therefor by [States and municipalities] *States, Indian tribes, and municipalities*, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

The Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.)

* * * * * * *

***SEC. 367. INDIAN ENERGY EFFICIENCY PROGRAM.***

*(a) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).*

*(b) PURPOSE.—The purpose of the grants provided under subsection (d) shall be to assist Indian tribes in implementing strategies—*

*(1) to develop alternative and renewable energy resources within the jurisdictions of eligible entities in a manner that—*

*(A) is environmentally sustainable; and*

*(B) to the maximum extent practicable, maximizes benefits for Indian tribes and tribal members;*

*(2) to increase the energy efficiency of Indian tribes and tribal members; and*

*(3) to improve energy efficiency in—*

*(A) the transportation sector;*

*(B) the building sector; and*

*(C) other appropriate sectors.*

*(c) TRIBAL ALLOCATION.—Of the amount of funds authorized to be appropriated for each fiscal year under section 365(f) to carry out this part, the Secretary shall allocate not less than 2.5 percent of the funds for each fiscal year to be distributed to Indian tribes in accordance with subsection (d).*

*(d) GRANTS.—Of the amounts available for distribution under subsection (c), the Secretary shall establish a competitive process for providing grants under this section that gives priority to projects that—*

*(1) increase energy efficiency and energy conservation rather than new energy generation projects;*

*(2) integrate cost-effective renewable energy with energy efficiency;*

*(3) move beyond the planning stage and are ready for implementation;*

*(4) clearly articulate and demonstrate the ability to achieve measurable goals;*

*(5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and*

*(6) maximize the creation or retention of jobs on Indian land.*

*(e) USE OF FUNDS.—An Indian tribe may use a grant received under this section to carry out activities to achieve the purposes described in subsection (b), including—*

*(1) the development and implementation of energy efficiency and conservation strategies;*

*(2) the retention of technical consultant services to assist the Indian tribe in the development of an energy efficiency and conservation strategy, including—*

*(A) the formulation of energy efficiency, energy conservation, and energy usage goals;*

*(B) the identification of strategies to achieve the goals—*

*(i) through efforts to increase energy efficiency and reduce energy consumption; and*

*(ii) by encouraging behavioral changes among the population served by the Indian tribe;*

*(C) the development of methods to measure progress in achieving the goals;*

*(D) the development and publication of annual reports to the population served by the eligible entity describing—*

*(i) the strategies and goals; and*

*(ii) the progress made in achieving the strategies and goals during the preceding calendar year; and*

*(E) other services to assist in the implementation of the energy efficiency and conservation strategy;*

*(3) the implementation of residential and commercial building energy audits;*

*(4) the establishment of financial incentive programs for energy efficiency improvements;*

*(5) the provision of grants for the purpose of performing energy efficiency retrofits;*

*(6) the development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the Indian tribe, including—*

*(A) the design and operation of the programs;*

*(B) the identification of the most effective methods of achieving maximum participation and efficiency rates;*

*(C) the education of the members of an Indian tribe;*

*(D) the measurement and verification protocols of the programs; and*

*(E) the identification of energy efficient technologies;*

*(7) the development and implementation of programs to conserve energy used in transportation, including—*

*(A) the use of—*

*(i) flextime by employers; or*

*(ii) satellite work centers;*

*(B) the development and promotion of zoning guidelines or requirements that promote energy efficient development;*

*(C) the development of infrastructure, including bike lanes, pathways, and pedestrian walkways;*

*(D) the synchronization of traffic signals; and*

*(E) other measures that increase energy efficiency and decrease energy consumption;*

*(8) the development and implementation of building codes and inspection services to promote building energy efficiency;*

*(9) the application and implementation of energy distribution technologies that significantly increase energy efficiency, including—*

*(A) distributed resources; and*

*(B) district heating and cooling systems;*

*(10) the implementation of activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;*

*(11) the purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;*

*(12) the replacement of traffic signals and street lighting with energy-efficient lighting technologies, including—*

*(A) light-emitting diodes; and*

*(B) any other technology of equal or greater energy efficiency;*

*(13) the development, implementation, and installation on or in any government building of the Indian tribe of onsite renewable energy technology that generates electricity from renewable resources, including—*

*(A) solar energy;*

*(B) wind energy;*

*(C) fuel cells; and*

*(D) biomass; and*

*(14) any other appropriate activity, as determined by the Secretary, in consultation with—*

*(A) the Secretary of the Interior;*

*(B) the Administrator of the Environmental Protection Agency;*

*(C) the Secretary of Transportation;*

*(D) the Secretary of Housing and Urban Development; and*

*(E) Indian tribes.*

*(f) GRANT APPLICATIONS.—*

*(1) IN GENERAL.—*

*(A) APPLICATION.—To apply for a grant under this section, an Indian tribe shall submit to the Secretary a proposed energy efficiency and conservation strategy in accordance with this paragraph.*

*(B) CONTENTS.—A proposed strategy described in subparagraph (A) shall include a description of—*

*(i) the goals of the Indian tribe for increased energy efficiency and conservation in the jurisdiction of the Indian tribe; and*

*(ii) the manner in which—*

*(I) the proposed strategy complies with the restrictions described in subsection (e); and*

*(II) a grant will allow the Indian tribe fulfill the goals of the proposed strategy.*

*(2) APPROVAL.—*

*(A) IN GENERAL.—The Secretary shall approve or disapprove a proposed strategy under paragraph (1) by not later than 120 days after the date of submission of the proposed strategy.*

*(B) DISAPPROVAL.—If the Secretary disapproves a proposed strategy under paragraph (1)—*

*(i) the Secretary shall provide to the Indian tribe the reasons for the disapproval; and*

*(ii) the Indian tribe may revise and resubmit the proposed strategy as many times as necessary, until the Secretary approves a proposed strategy.*

*(C) REQUIREMENT.—The Secretary shall not provide to an Indian tribe a grant under this section until a proposed strategy is approved by the Secretary.*

*(3) LIMITATIONS ON USE OF FUNDS.—Of the amounts provided to an Indian tribe under this section, an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements of this section, an amount equal to the greater of—*

*(A) 10 percent of the administrative expenses; or*

*(B) $75,000.*

*(4) ANNUAL REPORT.—Not later than 2 years after the date on which funds are initially provided to an Indian tribe under this section, and annually thereafter, the Indian tribe shall submit to the Secretary a report describing—*

*(A) the status of development and implementation of the energy efficiency and conservation strategy; and*

*(B) to the maximum extent practicable, an assessment of energy efficiency gains within the jurisdiction of the Indian tribe.*

42 U.S.C. § 6863 (Energy Conservation and Production Act)

**§ 6863. Weatherization program**

* * * * * * *

(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds.

[(1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide

such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.]

*(1) Reservation of amounts.—*

*(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of this part, the Secretary shall reserve from amounts that would otherwise be allocated to a State under this part not less than 100 percent, but not more than 150 percent, of an amount which bears the same proportion to the allocation of that State for the applicable fiscal year as the population of all low-income members of an Indian tribe in that State bears to the population of all low-income individuals in that State.*

*(B) RESTRICTIONS.—Subparagraph (A) shall apply only if—*

*(i) the tribal organization serving the low-income members of the applicable Indian tribe requests that the Secretary make a grant directly; and*

*(ii) the Secretary determines that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly than a grant made to the State in which the low-income members reside.*

*(C) PRESUMPTION.—If the tribal organization requesting the grant is a tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) that has operated without material audit exceptions (or without any material audit exceptions that were not corrected within a 3-year period), the Secretary shall presume that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly to the tribal organization than by a grant made to the State in which the low-income members reside.*

(2) [The sums] *ADMINISTRATION.—The amounts* reserved by the Secretary [on the basis of his determination] under this subsection shall be granted to the tribal organization serving the individuals for whom such a determination has been made] *low-income members of the Indian tribe*, or, where there is no tribal organization, to such other entity as [he] *the Secretary* determines has the capacity to provide services pursuant to this part.

(3) [In order] *APPLICATION.—In order* for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 6864 of this title. (e) Transfer of funds. Notwithstanding any other provision of law, the Secretary may transfer to the Director sums appropriated under this part to be utilized in order to carry out programs, under section 222(a)(12) of the Economic Opportunity Act of 1964, which further the purpose of this part.

The Tribal Forest Protection Act of 2004 (25 U.S.C. § 3115a)

* * * * * * *

**SEC. 2. TRIBAL FOREST ASSETS PROTECTION.**

(a) DEFINITIONS.—**[**In this section**]** *In this Act:*

(1) FEDERAL LAND.—The term "Federal land" means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 ( 43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) INDIAN FOREST LAND OR RANGELAND.—The term "Indian forest land or rangeland" means land that—

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and(B)

(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act ( 25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act ( 25 U.S.C. 450b).

(4) SECRETARY.—The term "Secretary" means—

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

* * * * * * *

***SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.***

*(a) STEWARDSHIP CONTRACTS OR SIMILAR AGREEMENTS.—For each of fiscal years 2015 through 2019, the Secretary shall enter into stewardship contracts or similar agreements (excluding direct service contracts) with Indian tribes to carry out demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.*

*(b) DEMONSTRATION PROJECTS.—In each fiscal year for which projects are authorized, at least 4 new demonstration projects that meet the eligibility criteria described in subsection (c) shall be carried out under contracts or agreements described in subsection (a).*

*(c) ELIGIBILITY CRITERIA.—To be eligible to enter into a contract or agreement under this section, an Indian tribe shall submit to the Secretary an application—*

*(1) containing such information as the Secretary may require; and*

*(2) that includes a description of—*

*(A) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; and*

*(B) the demonstration project proposed to be carried out by the Indian tribe.*

*(d) SELECTION.—In evaluating the applications submitted under subsection (c), the Secretary shall—*

*(1) take into consideration—*

*(A) the factors set forth in paragraphs (1) and (2) of section 2(e); and*

*(B) whether a proposed project would—*

*(i) increase the availability or reliability of local or regional energy;*

*(ii) enhance the economic development of the Indian tribe;*

*(iii) result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;*

*(iv) improve the forest health or watersheds of Federal land or Indian forest land or rangeland;*

*(v) demonstrate new investments in infrastructure; or*

*(vi) otherwise promote the use of woody biomass; and*

*(2) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.*

*(e) IMPLEMENTATION.—The Secretary shall—*

*(1) ensure that the criteria described in subsection (c) are publicly available by not later than 120 days after the date of enactment of this section; and*

*(2) to the maximum extent practicable, consult with Indian tribes and appropriate intertribal organizations likely to be affected in developing the application and otherwise carrying out this section.*

*(f) REPORT.—Not later than September 20, 2017, the Secretary shall submit to Congress a report that describes, with respect to the reporting period—*

*(1) each individual tribal application received under this section; and*

*(2) each contract and agreement entered into pursuant to this section.*

*(g) INCORPORATION OF MANAGEMENT PLANS.—In carrying out a contract or agreement under this section, on receipt of a request from an Indian tribe, the Secretary shall incorporate into the contract or agreement, to the maximum extent practicable, management plans (including forest management and integrated resource management plans) in effect on the Indian forest land or rangeland of the respective Indian tribe.*

*(h) TERM.—A contract or agreement entered into under this section—*

*(1) shall be for a term of not more than 20 years; and*

*(2) may be renewed in accordance with this section for not more than an additional 10 years.*

**§ 415. Leases of restricted lands**

(a) Authorized purposes; term; approval by Secretary. Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Aqua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, lands held in

trust for the Pueblo of Santa Clara, lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, *land held in trust for the Crow Tribe of Montana*, and lands held in trust for Ohkay Owingeh Pueblo which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

* * * * * * *

(e) LEASES OF RESTRICTED LANDS FOR THE NAVAJO NATION.—

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), and any amendments thereto**[**, except a lease for**]**, *including a lease for* the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

**[**(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and**]**

*(A) in the case of a business or agricultural lease, 99 years;*

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations**[**.**]***;* and

*(C) in the case of a lease for the exploration, development, or extraction of mineral resource (including geothermal resources), 25 years, except that—*

*(i) any such lease may include an option to renew for 1 additional term of not to exceed 25 years; and*

*(ii) any such lease for the exploration, development, or extraction of an oil or gas resource shall be for a term of not to exceed 10 years, plus such additional period as the Navajo Nation determines to be appropriate in any case in which an oil or gas resource is produced in a paying quantity.*

○